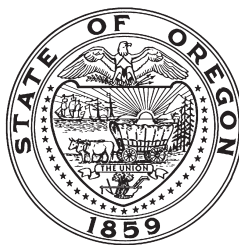


OREGON BULLETIN

Supplements the 2008 *Oregon Administrative Rules Compilation*

Volume 47, No. 8
August 1, 2008

For June 16, 2008–July 15, 2008



Published by
BILL BRADBURY
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 *Oregon Bulletin*. The *Oregon Administrative Rules Compilation* is an annual publication containing the complete text of the Oregon Administrative Rules at the time of publication. The *Oregon Bulletin* is a monthly publication which updates rule text found in the annual compilation and provides notice of intended rule action, Executive Orders of the Governor, Opinions of the Attorney General, and orders issued by the Director of the Department of Revenue.

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. Every administrative rule uses the same numbering sequence of a 3 digit agency chapter number followed by a 3 digit division number and ending with a 4 digit rule number. (000-000-0000)

How to Cite

Citation of the Oregon Administrative Rules is made by chapter and rule number. Example: Oregon Administrative Rules, chapter 164, rule 164-001-0005 (short form: OAR 164-001-0005).

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 online OAR Compilation is updated on the first of each month to include all rule actions filed with the Secretary of State’s office by the 15th of the previous month, or by the previous workday if the 15th is on a weekend or holiday. The annual printed *Oregon Administrative Rules Compilation* contains the full text of all permanent rules filed through November 15 of the previous year. Subsequent changes to individual rules are listed in the OAR Revision Cumulative Index which is published monthly in the *Oregon Bulletin*. Changes to individual administrative rules are listed in the OAR Revision Cumulative Index by OAR number and include the effective date, the specific rulemaking action and the issue of the *Oregon Bulletin* which contains the full text of the amended rule. The *Oregon Bulletin* publishes the full text of permanent and temporary administrative rules submitted for publication.

Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available in electronic and printed formats. Electronic versions are available through the Oregon State Archives Web site at <http://arcweb.sos.state.or.us>. Printed copies of these publications are deposited in Oregon’s Public Documents Depository Libraries listed in OAR 543-070-0000 and 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

2007–2008 Oregon Bulletin Publication Schedule

The Administrative Rules Unit accepts rulemaking notices and filings Monday through Friday 8:00 a.m. to 5:00 p.m. 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 publication deadlines.

Submission Deadline — Publishing Date

December 14, 2007	January 1, 2008
January 15, 2008	February 1, 2008
February 15, 2008	March 1, 2008
March 14, 2008	April 1, 2008
April 15, 2008	May 1, 2008
May 15, 2008	June 1, 2008
June 13, 2008	July 1, 2008
July 15, 2008	August 1, 2008
August 15, 2008	September 1, 2008
September 15, 2008	October 1, 2008
October 15, 2008	November 1, 2008
November 14, 2008	December 1, 2008

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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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 08 - 13

AMENDMENT TO EXECUTIVE ORDER 08-03 ON OREGON SMALL BUSINESS ADVISORY COUNCIL

On January 24, 2008, I issued Executive Order 08-03, establishing the Oregon Small Business Advisory Council (Council). The goals of the Council remain unchanged; however, to implement its mission, the Council must remain in existence for a longer period of time.

IT IS HEREBY ORDERED AND DIRECTED:

1. Executive Order 08-03 is amended to expire on July 31, 2012.

Done at Salem, Oregon, this 23rd day of June, 2008.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 08 - 14

AMENDMENT TO EXECUTIVE ORDER 08-05 ESTABLISHING GOVERNOR'S TASK FORCE ON CAMPUS SAFETY IN OREGON

On February 4, 2008, I issued Executive Order 08-05, establishing the Governor's Task Force on Campus Safety in Oregon. The goals of the Task Force on Campus Safety remain unchanged; however, to implement its mission, the Task Force must remain in existence for a longer period of time.

IT IS HEREBY ORDERED AND DIRECTED:

1. The Task Force on Campus Safety shall provide a final report to the Governor's Office, the Oregon State Board of Education and the Oregon State Board of Higher Education no later than December 31, 2008.
2. Executive Order 08-05 is amended to expire on December 31, 2008.

Done at Salem, Oregon, this 14th day of July, 2008.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION DETERMINATION FOR WASHINGTON COUNTY COMMUTER RAIL — HALL BLVD DUMP SITE, BEAVERTON, OREGON

COMMENTS DUE: September 1, 2008

PROJECT LOCATION: Just north of intersection of Hall Blvd and Highway 217 off-ramp in Beaverton, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.230 and 465.320, and Oregon Administrative Rules, OAR 340-122-0077, OAR 340-122-0078 and OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve a no further action determination (NFA) for a discovered dump site located in southeast Beaverton, Oregon.

HIGHLIGHTS: DEQ has reviewed several reports that describe hazardous substance and soil removal actions taken by TriMet after discovery of a former dumping area, located adjacent to a new commuter rail line located north of Hall Boulevard in Sherwood, Oregon. The site is located on land that is a transportation easement just west of the off-ramp of south-bound Highway 217 onto Hall Boulevard. Soils in the disposal pit, which contained barrels of a tar substance, broken mercury oxide/zinc alloy batteries, railroad ties and other wastes, were contaminated with elevated concentrations of petroleum hydrocarbons, lead and mercury. Site investigation activities also found elevated concentrations of mercury in soils on the west side of the railroad grade, which had been conveyed to a ditch through an old (now closed) culvert.

The remedial actions undertaken by TriMet included removal of the disposed wastes and 653 tons of contaminated soils from the pit area. In addition, TriMet's consultant performed an ecological risk evaluation to determine residual risk from the small area of mercury-contaminated soils on the west side of the railroad grade.

Residual concentrations of mercury in the west side ditch soils were found to not pose an unacceptable risk to ecological species. Based on the work completed by TriMet and their consultants, DEQ is prepared to issue a NFA for the area.

HOW TO COMMENT: DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments and request to Chuck Harman, Project Manager, at the address listed above or via email at harman.charles@deq.state.or.us by 5 p.m., September 1, 2008.

Summaries of site information can be found on the internet in DEQ's on-line Environmental Cleanup Site Information (ECSI) database (<http://www.deq.state.or.us/wmc/ecsi/ecsiquery.htm>). The WCCR — Hall Blvd Dump site is listed as ECSI # 4722.

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

THE NEXT STEP: DEQ will consider all public comments received by the September 1, 2008 deadline and the Regional Cleanup Manager will make a final decision after consideration of these public comments.

CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION DECISION FOR THE SITE

COMMENTS DUE: September 2, 2008

PROJECT LOCATION: The site is located at 2701 N Newark Street in Portland, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a final remedy for the upland portion (above elevation 8 feet mean sea level) of the former Pacific Meat Company Site

(ECSI File #145). Implementation of the final remedy will be conducted under the existing Consent Order as amended to reflect a final remedy selection and Record of Decision for the site. Because institutional controls will be implemented the site will not be removed from the Confirmed Release and Inventory Lists. Contamination identified in the adjacent Columbia Slough will be addressed in a separate DEQ-led action under a separate order.

Highlights: The former Pacific Meat Company site is located in an industrial area of north Portland adjacent to the Columbia Slough. The site historically has been occupied by meat rendering operations, beginning with the Sterrett Brothers from 1924 to 1946 and Pacific Meat Company from 1946 to 1978. From about 1979 to 1981 a salvaging operations occupied the site recovering precious metals, including gold, lead, silver, and metal parts from transformers and other machines, and also surplus paints and transformer oil that was known to contain polychlorinated biphenyls (PCBs). Cyanide may have been used in the metals recovery process, and lead, mercury, antimony, cadmium, and arsenic were byproducts of smelting and plating conducted onsite using PCB-bearing transformer oil for fuel. In 1983 the site was held by Pacific Western Bank and in 1986 the site was sold to Tindall Family Properties LLC who is the current property owner.

The site contains a complex of warehouse type buildings, with an onsite industrial use water well, stormwater collection system with catch basins located throughout the site, three sumps and associated oil and water separator, three discharge outfalls to the Columbia Slough, and two unlined ponds in the northern portion of the site adjacent to the Columbia Slough. During the period of metals salvaging operations, direct discharge to the unlined ponds occurred via the onsite stormwater/sump system and direct discharge to the Slough occurred via one or more outfalls. In addition, contamination in surface soil may reach the Slough via stormwater overland flow in a portion of the site.

A remedial investigation of the site determined the nature and extent of contamination in soil in the upland portion of the site, in Slough bank soil, pond sediment, groundwater and Slough sediments. Contaminants that have been detected in these media include metals, PCBs, polyaromatic hydrocarbons (PAHs), and cyanide. Areas where soil contamination exceeds risk-based criteria for industrial direct exposure includes soil adjacent to the ponds, in the northeast portion of the site in the former transformer reclamation area, and pond sediments. Contaminants of concern exceeding acceptable human health risk levels in soil include arsenic, PCBs and Benzo(a)pyrene. Contaminants detected in groundwater did not exceed human health risk criteria but dissolved barium, cyanide and zinc exceeded ecological risk criteria for protection of aquatic receptors in the Columbia Slough. Groundwater is presumed to flow northward beneath the unlined ponds with likely discharge of contaminated groundwater into the nearby Columbia Slough.

A Focused Feasibility Study proposed remedial alternatives to address soil, sediment and groundwater contamination in the upland portion of the site. The remedial alternatives propose excavation of contaminated soil where concentrations exceed human health and ecological risk-based criteria appropriate for the site and manage the soil onsite with some offsite disposal, use of engineering controls to prevent infiltration of surface water into pond sediments which are proposed to remain in place, institutional controls to place restrictions on use of soil and groundwater, and groundwater monitoring. DEQ proposes Alternative 4 as the final site remedy. This alternative would excavate all soil contaminated above risk-based criteria, including identified hot spots of contamination, except for contaminated soil in the Slough bank, and place the excavated soil into the unlined ponds over existing contaminated sediment that will remain in place. Contaminated soil in the Slough bank will be capped. If the volume of excavated contaminated soil exceeds the available capacity for filling the ponds, the excess soil will be disposed offsite. A low permeability cap will be placed over the filled ponds and sloped to drain away from the ponds. Clean soil would be placed in all areas of excavation to restore site grade and over the pond low permeability cap where native vegetation will be planted to further reduce infiltration. Groundwater monitoring wells will be installed in the pond

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area to monitor groundwater quality and the performance of the low permeability cap. An Easement and Equitable Servitudes will be filed with Multnomah County to restrict residential use of groundwater, soil excavation during any future development of the site, and adherence to a soil management plan.

DEQ has concluded that Alternative 4 is appropriate and protective of human health and the environment. The existing Consent Order will be amended to incorporate the final remedy design, implementation, operation and maintenance and the site will remain on the Confirmed Release and Inventory Lists.

HOW TO COMMENT: You can review the administrative record for the proposed final remedy for the Pacific Meat Company site at DEQ's Northwest Region east side office located at 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon. For an appointment to review the files call (503)667-8414, extension 55026; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mavis D. Kent, Project Manager, DEQ Northwest Region East Side Office, 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030 or via email at: kent.mavis.d@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on September 2, 2008. This notice will also be published in the local newspaper The Oregonian.

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

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

THE NEXT STEP: DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a Record of Decision for the site.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR FORMER OCHOCO LUMBER COMPANY

COMMENTS DUE: August 30, 2008

PROJECT LOCATION: 200 SE Combs Flat Road, Prineville, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.320 and Oregon Administrative Rules (OAR) 340-122-0100, the Department of Environmental Quality (DEQ) is proposing approval of a cleanup conducted at the former Ochoco Lumber Company site. The site was developed in 1938 and was used for sawing logs, drying and planning lumber. The mill closed in 2001 and in 2005 the property entered into DEQ's Voluntary Cleanup Program to address areas of potential environmental concern resulting from past mill uses. Petroleum contamination, primarily from lumber operation activities at the site, has been identified as the principal contaminant of concern.

HIGHLIGHTS: The approximately 76 acre property was formerly a lumber mill and associated mill buildings, except the main office, have been demolished with the concrete foundations remaining. While the mill was used for sawing logs, drying and planning lumber, no wood treatment or veneer operations were conducted at the property.

The mill closed in 2001 and between 2005 and 2007, all of the structures associated with mill operations were demolished or removed, inclusive of concrete foundations. The site is in the process of being redeveloped into a mixed use development, including commercial, light industrial and possible residential uses.

Soil was removed from several locations at the site down to the groundwater table and disposed of at the Crook County landfill. Approximately 4,365 tons of soil were removed and disposed at the landfill. While heavy oil and diesel contamination in soil remains at

depth in three locations on the site, monitoring wells installed at the site indicate that there is no impact to groundwater from past mill operations. The three locations are the

- Large Log Mill area at six feet depth;
- Debarker area at nine feet depth; and
- Planer area at 14 feet depth.

These locations are below the current and likely future risk pathway exposure depths. And based on the conceptual design for future development are either below parking lots, roadways, or buildings. In addition, a soil management plan for the site will be developed to help manage and dispose of any soil that may need to be managed during future construction and maintenance activities.

HOW TO COMMENT: The full file, including the project documents, are available for review at DEQ's Bend office, 300 SE Reed Market Road, Bend, OR 97702, (541) 388-6146. Office hours are 8 a.m. to noon and 1 to 5 p.m., Monday through Friday. Questions or concerns regarding DEQ's decision should be sent to the project manager at the Department of Environmental Quality, Eastern Region, 300 SE Reed Market Rd, Bend, OR 97702, or via e-mail to anderson.david@deq.state.or.us.

THE NEXT STEP: Following the public comment period and consideration of any comments received, DEQ expects to issue a No Further Action determination for the site.

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

People with hearing impairments may call DEQ's TTY number, (local office TTY).

PROPOSED APPROVAL OF REMEDIAL ACTIONS AT NOLTE-FULLER INSURANCE, LAKEVIEW, OREGON

COMMENT DUE: August 30, 2008

PROJECT LOCATION: 28 North 'G' Street, Lakeview, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) intends to issue a finding of No Further Action (NFA) required for investigation and cleanup at the subject property known as Nolte-Fuller Insurance. DEQ's decision is based upon a report by the consulting company PBS Environmental, which details the site investigation and cleanup of petroleum contaminated soils.

HIGHLIGHTS: Cleanup of petroleum-contaminated soil (PCS) from an accidental release of diesel heating oil, led to the discovery and subsequent decommissioning by removal of an empty 750-gallon capacity heating oil underground storage tank (UST). Approximately 79 tons of PCS were excavated from the site and disposed of at the Crook County Landfill. The release occurred from a broken fuel line on an aboveground heating oil tank. The tank was located in a nine foot-wide walkway which runs between Nolte-Fuller Insurance and the building immediately to the south. To avoid compromising the integrity of either building's foundation, excavation was halted and approximately 3 cubic yards of PCS were left in-place. A risk-based evaluation determined that residual contamination was below the applicable site-specific risk-based cleanup levels and/or screening standards established by DEQ for this site. Additional information concerning the investigation and cleanup is available for review upon request. To schedule an appointment, please contact Joe Klemz, DEQ's project manager located in Bend, Oregon.

HOW TO COMMENT: A public comment period will extend from August 1 to August 30, 2008. Written comments and questions may be submitted in person, by email, or via US Mail. Please address all comments and/or inquiries to Mr. Klemz in DEQ's Bend office:

Oregon Department of Environmental Quality
300 SE Reed Market Road
Bend, Oregon 97702
(541)388-6146, ext. 237
klemz.joe@deq.state.or.us

OTHER NOTICES

Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be scheduled 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.

PROPOSED APPROVAL OF CLEANUP AT AUTO BODY CONCEPTS, INC., BEND, OREGON

COMMENT DUE: August 30, 2008

PROJECT LOCATION: 61585 American Loop, Bend, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) intends to issue a finding of No Further Action (NFA) required for the cleanup of sediments from an underground injection control (UIC) system used to dispose of storm water runoff at the subject property. DEQ's decision is based upon information submitted by the consulting company Bussard Williams. Public notification is required by ORS 465.320.

HIGHLIGHTS: The UIC system is utilized to handle storm-water runoff from the facility's parking lot and building roof. Approximately one-half ton of sediment was removed from the UIC system by pressure washing and simultaneous vacuum extraction. The resulting slurry material was then removed from the site, placed in an open container and the liquid allowed to evaporate. The residual material was taken to a permitted solid waste facility for disposal as petroleum-contaminated soil. Prior to disposal, the sediments were sampled for total petroleum hydrocarbons (TPH) and selected metals. Analytical results determined that the detected TPH was present at levels below applicable risk-based concentrations and that the metals detected did not exceed leachable toxicity criteria. Contamination that was removed from this site was documented at levels below selected cleanup and/or screening standards established by the DEQ for this site. More information concerning this cleanup is available by contacting Joe Klemz, DEQ's project manager, located in Bend, Oregon.

HOW TO COMMENT: A public comment period will extend to August 30, 2008. Please direct all comments and/or inquiries to Mr. Klemz at the following address:

Department of Environmental Quality
300 SE Reed Market Road
Bend, Oregon 97702
(541) 388-6146, ext. 237
klemz.joe@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.

RECORD OF DECISION AND REQUEST FOR COMMENT PROPOSED NO FURTHER ACTION AND PROPOSED CERTIFICATE OF COMPLETION OREGON METALLURGICAL CORP., LINN COUNTY, OREGON

COMMENTS DUE: September 2, 2008

PROJECT LOCATION: 530 34th Avenue SW, Albany, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) has approved a series of measures undertaken by Oregon Metallurgical Corporation (Oremet) to remediate contamination present at the facility and has entered into a Consent Judgment for Remedial Action with Oremet (dba Allvac). As required by ORS 465.320 and ORS 465.325(10)(b), DEQ now invites public comment on a proposal to issue a No Further Action determination and a Certificate of Completion for the site.

HIGHLIGHTS: Oremet completed a comprehensive remedial investigation in 2006 and a human health and ecological risk assessment in 2008 to evaluate the nature and extent of chemicals in environmental media and associated risks to human and ecological recep-

tors posed by releases at the site. The investigations found that actions already taken to remediate site contamination, including capping an industrial landfill and removing contaminated soils from multiple areas of the site have been successful in mitigating the effects of the releases. A Record of Decision and a Consent Judgment summarize remedial activities at the site and require additional institutional controls to complete the remedy. Because Oremet has completed the remedial actions required in these two documents, DEQ is proposing to issue a No Further Action determination and a Certificate of Completion for the site.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eugene office at 1102 Lincoln St, Ste 210, Eugene, OR 97401. To schedule an appointment to review the file or to ask questions, please contact Bill Mason at (541) 687-7427. Summary information and a copies of the two documents referenced above are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet. To review this material, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 858 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 858 in the Site ID/Info column. To be considered, written comments should be sent to Bill Mason, Project Manager, at the address listed above or by email at mason.bill@deq.state.or.us, and must be received by 8:00 PM on Tuesday, September 2, 2008. A public meeting will be held upon written request by ten or more persons or by a group with a membership of 10 or more.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed No Further Action determination and proposed Certificate of Completion.

REQUEST FOR COMMENT PROPOSED NO FURTHER ACTION AND PROPOSED CERTIFICATE OF COMPLETION NORTHWEST INDUSTRIES, LINN COUNTY, OREGON

COMMENTS DUE: September 2, 2008

PROJECT LOCATION: 125 34th Avenue SW, Albany, Oregon

PROPOSAL: In 2003, the Department of Environmental Quality (DEQ) approved a series of measures to be undertaken by Northwest Industries (NWI) to remediate contamination present at their specialty-metal fabrication facility. NWI has completed these remedial actions, and as required by ORS 465.320 and ORS 465.325(10)(b), DEQ now invites public comment on a proposal to issue a No Further Action determination and a Certificate of Completion for the site.

HIGHLIGHTS: Past spills and disposal of waste solvent in floor drains at the NWI facility resulted in contamination of soil and groundwater by trichloroethylene. DEQ has been overseeing environmental investigation and cleanup of this contamination since 1987. The most recent cleanup actions have reduced contaminant levels at NWI to state standards. Because NWI has completed the remedial actions required, DEQ is proposing to issue a No Further Action determination and a Certificate of Completion for the site.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eugene office at 1102 Lincoln St, Ste 210, Eugene, OR 97401. To schedule an appointment to review the file or to ask questions, please contact Bill Mason at (541) 687-7427. Summary information and other documentation is available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet. To review this material, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 224 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 224 in the Site ID/Info column. To be considered, written comments should be sent to Bill Mason, Project Manager, at the address listed above or by email at mason.bill@deq.state.or.us, and must be received by 8:00 AM on Tuesday, September 2, 2008. A public meeting will be held upon written request by ten or more persons or by a group with a membership of 10 or more.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed No Further Action determination and proposed Certificate of Completion.

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.

Columbia River Gorge Commission Chapter 350

Rule Caption: Repeal unused rules, enact conforming amendment and new section.

Date:	Time:	Location:
10-14-08	9 a.m.	Cascade Locks Port Pavillion 355 WaNaPa St. Cascade Locks, OR

Hearing Officer: Staff

Stat. Auth.: ORS 196.150

Other Auth.: RCW 43.97.015, 16 USC Sec. 544c(b)

Stats. Implemented: ORS 196.150 & RCW 43.97.015, 16 USC 544c(b)

Proposed Adoptions: 350-015-0100

Proposed Amendments: 350-081-0046

Proposed Repeals: Rules in 350-080 & 350-020, 350-015-0001, 350-015-0003, 350-015-0004, 350-015-0005, 350-015-0006, 350-015-0007, 350-015-0008, 350-015-0009, 350-015-0010, 350-015-0011, 350-015-0012, 350-015-0013, 350-015-0014, 350-015-0015, 350-015-0016, 350-015-0017, 350-015-0018, 350-015-0019, 350-015-0020, 350-015-0025, 350-015-0026, 350-015-0027, 350-015-0028

Last Date for Comment: 10-1-08

Summary: The purpose of this proposal is to repeal two prior chapters of the Commission's rules relating to land use permitting. The Commission no longer uses these rules to review development applications. The Commission is amending one section to require changes to existing land use decisions comply with the current land use ordinance, which is the only land use ordinance that would remain after this proposal. Finally, the Commission is repealing its existing public contracting provision, which are out-of-date, and adopting a new public contracting provision that specifies the Commission use Washington's public contracting laws, which is the Commission's current practice. These repeals will save more than 300 pages of printing.

Rules Coordinator: Nancy A. Andring

Address: Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672

Telephone: (509) 493-3323

Department of Administrative Services, Office of Business Administration Chapter 121

Rule Caption: Rules for Annual Charitable Fund Drive Program.

Date:	Time:	Location:
8-22-08	2 p.m.	1225 Ferry St. SE Salem, OR

Hearing Officer: Fred Lord

Stat. Auth.: ORS 184.305, 184.340, 184.345, 292.043 & 292.045

Stats. Implemented: ORS 184.305, 184.340, 184.345, 292.043 & 292.045

Proposed Amendments: 121-030-0000, 121-030-0010, 121-030-0020, 121-030-0030, 121-030-0040, 121-030-0050, 121-030-0060, 121-030-0070

Proposed Ren. & Amends: 121-030-0080 to 121-030-0090

Last Date for Comment: 8-22-08, 5 p.m.

Summary: These rules provide a process for planning and managing the Annual Charitable Fund Drive Program and provide a wide range of choices for state employees and retirees from state service who wish to give to charitable organizations and support Oregon communities. The proposed rule changes improve clarity and readability, update participation requirements in existing rules, and add a provision for designation of direct recipients.

Rules Coordinator: Yvonne Hanna

Address: 155 Cottage St, NE Salem, OR 97301

Telephone: (503) 378-2349, ext. 325

Department of Agriculture Chapter 603

Rule Caption: Increase Brand Inspection Fee for the brand inspection of cattle.

Date:	Time:	Location:
8-15-08	11:30 a.m.	304 SE Nye Ave. Pendleton, OR
8-21-08	1 p.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 604

Stats. Implemented:

Proposed Amendments: 603-014-0095

Last Date for Comment: 9-4-08

Summary: This rule amends Brand Inspection Fee to increase brand inspection fees for cattle to \$1.00.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Rule Caption: Creates a control area regulating importation of hazelnut plants into Oregon.

Date:	Time:	Location:
8-27-08	9 a.m.	North Willamette Research Ctr 15210 NE Miley Rd. Aurora, OR 97002

Hearing Officer: Janet Fults

Stat. Auth.: ORS 570.405

Other Auth.: ORS 570.305 & 561.190

Stats. Implemented: ORS 561.510

Proposed Adoptions: 603-052-0825

Last Date for Comment: 9-5-08

Summary: The proposed rule would help protect Oregon's hazelnut industry from a new strain of Eastern filbert blight by restricting imports of hazelnut plants to those meeting one of the following criteria: (1) originating in a pest free area; (2) imported into post entry quarantine; or (3) produced by micro propagation. The Oregon Department of Agriculture must be notified of shipments of import-

NOTICES OF PROPOSED RULEMAKING

ed hazelnut plants and the plants may be required to be inspected and held for up to two years.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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

Rule Caption: 2009 Workers' Compensation Premium Assessment Rates.

Date:
9-22-08

Time:
2 p.m.

Location:
Labor & Industries Bldg.
350 Winter St. NE
Conference Rm. F
Salem, OR

Hearing Officer: Fred Bruyns.

Stat. Auth.: ORS 705.135, 656.726 & 656.612

Stats. Implemented: ORS 656.612 & 656.614

Proposed Amendments: 440-045-0020, 440-045-0025

Last Date for Comment: 9-22-08, 5 p.m.

Summary: The director adopts by rule the workers' compensation premium assessment rate that is paid by all employers based on their workers' compensation premium and is collected by the insurer at the time the employer pays the premium. This assessment is used to fund workers' compensation related programs and workplace safety and health programs that serve Oregon employers and workers. In addition, the rule adopts the rate for an additional assessment percentage amount that is collected from all self-insured employers as well as all self-insured employer groups to fund the Self-Insured Employers Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve. These reserves are established to assure benefits are available in the event of a financial failure of a self-insured employer or self-insured employer group. This rulemaking will adopt the assessment percentage that will be in effect from January 1, 2009 to December 31, 2009. Before recommending the 2009 premium assessment rate, the department must analyze financial data that is not available until late July 2008, review the data, and authorize or disapprove a proposed workers' compensation pure premium insurance rate filing filed by the National Council on Compensation Insurance. We expect the recommendation for the 2009 premium assessment rate to be announced between September 15 and September 19, 2008.

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

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

Rules Coordinator: Kristen Miller

Address: Department of Consumer and Business Services, Director's Office, 350 Winter St. NE, PO Box 14480, Salem, OR 97309-0405

Telephone: (503) 947-7866

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

Rule Caption: Proposed changes to Division 1, Safety Committees with House Bill 2222.

Date:
8-28-08

Time:
9:30 a.m.

Location:
Labor & Industries Bldg.
Basement - Conference Rm. F
350 Winter St. NE
Salem, OR

Hearing Officer: Sue C. Joye

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

Stats. Implemented: ORS 654.001 - 654.295

Proposed Amendments: 437-001-0203, 437-001-0765, 437-002-0182

Last Date for Comment: 9-3-08

Summary: Oregon OSHA is reopening the proposed amendments to the Oregon Administrative Rules for Workplace Safety Committees. A need to further amend the proposed rule was recognized once the public hearings were adjourned. Comments received at the public hearings warranted further review and the Advisory Committee reconvened to discuss the issue of centralized safety committees and the current penalty structure for failure to comply with safety committee rules. As a result of those meetings, additional amendments to the rule are being proposed.

Oregon OSHA proposes to amend Oregon Administrative Rules for Workplace Safety Committees. The proposed rule change will require every public and private employer subject to OR-OSHA jurisdiction to establish and administer an effective safety committee or conduct safety meetings. The changes will apply to Division 1, General Administrative Rules, OAR 437-001-0765 Rules for Workplace Safety Committees. The changes are required as a result of the passing of House Bill 2222 by the 2007 Oregon Legislative Regular Session. House Bill 2222 also amended ORS 654.176 and 654.182.

ORS 654.176 was amended to read:

654.176. To promote health and safety in places of employment in this state, *every public or private employer shall*, in accordance with rules adopted pursuant to ORS 654.182, establish and administer a safety committee or hold safety meetings.

All language contained in ORS 654.176 (1)(a), (b), (b)(A) and (b)(B) was removed.

ORS 654.182 was amended in the following areas:

654.182. (1) In carrying out ORS 654.176, the Director of the Department of Consumer and Business Services shall **adopt rules** that include, but are not limited to, provisions that:

(f) Prescribing alternate forms of safety committees and safety meetings to meet the special needs of small employers, agricultural employers and employers with mobile worksites.

These legislative changes remove the specific and detailed requirements for the formation and conduct of safety committees and authorize Oregon OSHA to develop rules that provide options for small employers. These proposed rules maintain most of the existing safety committee requirements for larger employers. For employers with 10 or fewer employees, mobile worksites, or with primarily office environments, they will now have the option to hold safety meetings with a significant reduction in paperwork burden.

Oregon OSHA proposes to amend OAR 437-001-0203, Determination of Penalty – Relating to Violations Which Have No Probability. The proposed rule change removes paragraph (7) which will eliminate the minimum penalty of \$100 if an employer fails to establish a safety committee as required by OAR 437-001-0765. The proposal will allow Oregon OSHA to set penalties for failure to have an effective safety committee or hold effective safety meetings based on the hazards that the employer actually has.

Oregon OSHA also proposes to amend OAR 437-002-0182, Oregon Rules for Fire Fighters in Division 2/L. The proposed rule change will allow fire service activities to establish a separate fire service safety committee or opt for safety meetings based on employee numbers. The intent of this change is to clarify that every employer that does fire service work must have a separate safety committee and allows those companies that have 10 or fewer employees the option to simply hold effective safety meetings in accordance with the proposed amendments to OAR 437-001-0765 in Division 1.

Please visit our web site www.orosha.org

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

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

NOTICES OF PROPOSED RULEMAKING

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

Rule Caption: Rules on how insurers report proof of workers' compensation insurance coverage to the department.

Date:	Time:	Location:
8-21-08	2 p.m.	Labor & Industries Bldg. 350 Winter St. NE 2nd Floor, Rm. 260 Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: OL 2007 Ch. 241 (SB 559) affecting ORS 656, primarily 656.419, 656.423, 656.427 & 656.726

Proposed Adoptions: 436-160-0355, 436-160-0370

Proposed Amendments: Rules in 436-050, 436-160

Proposed Repeals: 436-050-0070, 436-050-0080, 436-050-0090, 436-050-0100

Last Date for Comment: 8-28-08

Summary: The agency proposes to amend OAR chapter 436, division 050, "Employer/Insurer Coverage Responsibility," and OAR chapter 436, division 160, "Electronic Data Interchange," to establish a new process for maintaining and reporting proof of workers' compensation insurance coverage. Effective 7/1/2009, Senate Bill 559 eliminates references in ORS Chapter 656 to the "guaranty contract" as an instrument for the insurer to maintain proof of coverage with the director. The revised statute refers instead to the "workers' compensation insurance policy." The proposed rules describe: a new policy-based proof-of-coverage and electronic reporting system, as well as the process for transition to that system; insurers' proof-of-coverage record-keeping requirements; and potential civil penalties for failure to provide timely reports to the director regarding coverage.

Address questions or written testimony to:

Fred Bruyns, rules coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#prop> rules or at no charge from WCD Publications, 503-947-7627 or fax 503-947-7630.

Rules Coordinator: Fred Bruyns

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

Telephone: (503) 947-7717

Department of Corrections Chapter 291

Rule Caption: Substance of Abuse Urinalysis Testing of Inmates in DOC Facilities.

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

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

Proposed Amendments: 291-042-0005, 291-042-0010, 291-042-0011, 291-042-0015, 291-042-0025, 291-042-0035

Proposed Repeals: 291-042-0045

Last Date for Comment: 8-29-08

Summary: Amendments and repeal of these rules is necessary to update the criteria and methodology by which urine samples of inmates incarcerated in Department facilities are collected and tested for substances of abuse. The new methodology will increase the number of substances tested. Other changes are necessary to update the terminology and reflect operational changes within the Department.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Energy Chapter 330

Rule Caption: Establish Renewable Energy Certificate Tracking and Reporting System for Oregon Renewable Portfolio Standard.

Date:	Time:	Location:
8-19-08	10 a.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR

Hearing Officer: Kip Pheil

Stat. Auth.: ORS 469A.130 & 469.040(d)

Stats. Implemented: ORS 469A.130 - 469A.145

Proposed Adoptions: 330-160-0005, 330-160-0015, 330-160-0020, 330-160-0025, 330-160-0030

Last Date for Comment: 8-22-08, Close of Business

Summary: Implement details for the Oregon Renewable Portfolio Standard (RPS) as follows: (1) Designate the Western Renewable Energy Generation System (WREGIS) as the renewable energy certificate tracking and reporting mechanism for the Oregon RPS.

(2) Relate definitions for renewable energy certificates in the Oregon RPS to specific system elements in WREGIS.

(3) Designate the date of establishment for the Oregon renewable energy certificate system as January 1, 2007.

Rules Coordinator: Kathy Stuttaford

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

Telephone: (503) 378-4128

Department of Environmental Quality Chapter 340

Rule Caption: Adoption of Federal Air Quality Regulations.

Date:	Time:	Location:
8-18-08	6 p.m.	DEQ - Bend Regional Office Conference Rm. 300 SE Reed Market Rd. Bend, OR 97702
8-19-08	6 p.m.	Community Justice Center First Fl. Conference Rm., 1101 W Main, Suite 101 Medford, OR 97501
8-21-08	6 p.m.	DEQ Headquarters 811 SW 6th Ave., Rm. EQC-A Portland, OR 97204

Hearing Officer: Mark Fisher, Byron Peterson, William Knight

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Proposed Adoptions: 340-228-0601, 340-228-0609, 340-228-0611, 340-228-0613, 340-228-0615, 340-228-0617, 340-228-0619, 340-228-0621, 340-228-0623, 340-228-0625, 340-228-0627, 340-228-0629, 340-228-0631, 340-228-0633, 340-228-0635, 340-228-0637, 340-230-0335, 340-230-0359, 340-244-0232, 340-244-0234, 340-244-0236, 340-244-0238, 340-244-0240, 340-244-0242, 340-244-0244, 340-244-0246, 340-244-0248, 340-244-0250, 340-244-0252

Proposed Amendments: 340-200-0040, 340-216-0020, 340-216-0060, 340-228-0600, 340-228-0602, 340-228-0603, 340-228-0606, 340-230-0300, 340-230-0310, 340-230-0320, 340-230-0330, 340-230-0340, 340-230-0350, 340-238-0040, 340-238-0060, 340-238-0090, 340-242-0520, 340-244-0020, 340-244-0030, 340-244-0100, 340-244-0210, 340-244-0220

Proposed Repeals: 340-228-0604, 340-228-0605, 340-228-0608, 340-228-0610, 340-228-0612, 340-228-0614, 340-228-0616, 340-228-0618, 340-228-0620, 340-228-0622, 340-228-0624, 340-228-0626, 340-228-0628, 340-228-0630, 340-228-0632, 340-228-0634, 340-228-0636, 340-228-0638, 340-228-0640, 340-228-0642, 340-228-0644, 340-228-0646, 340-228-0648, 340-228-0650, 340-228-0652, 340-228-0654, 340-228-0656, 340-228-0658, 340-228-0660, 340-228-0662, 340-228-0664, 340-228-0666, 340-228-0668, 340-228-0670, 340-228-0671, 340-228-0672, 340-228-0673, 340-228-0674, 340-228-0676, 340-228-0678, 340-232-0070, 340-238-0050,

NOTICES OF PROPOSED RULEMAKING

340-244-0110, 340-244-0120, 340-244-0130, 340-244-0140, 340-244-0150, 340-244-0160, 340-244-0170, 340-244-0180

Last Date for Comment: 8-26-08, 5 p.m.

Summary: The Oregon Department of Environmental Quality (DEQ) is proposing that the Environmental Quality Commission (EQC) adopt standards that implement and in some cases go beyond new and amended federal air quality regulations. The objective of this rulemaking is to ensure that the emissions reductions required under the new and amended federal air quality regulations are made in Oregon, and to go beyond the federal regulations where further reductions are needed to protect Oregonians. The expected result of this rule is the maintenance of Oregon's delegation of the federal standards, the use of low mercury coal and/or mercury controls in Oregon, and the reduction of benzene emissions in Oregon.

To submit comments or request additional information, please contact Jerry Ebersole at the Department of Environmental Quality (DEQ), 811 SW 6th Ave, Portland, OR 97204, toll free in Oregon at 800-452-4011 or 503-229-6974, or at federalrule@deq.state.or.us, or by fax 503-229-5675, or visit DEQ's website <http://www.deq.state.or.us/news/publicnotices/PN.asp>.

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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Rule Caption: Lane Regional Air Protection Agency Air Quality Permit Program Streamlining and Updates.

Date:	Time:	Location:
8-26-08	5:30 p.m.	225 5th St. Springfield, OR
9-9-08	12:15 p.m.	1010 Main St. Springfield, OR

Hearing Officer: Max Hueftle, LRAPA

Stat. Auth.: ORS 183, 468.020 & 468A.135

Stats. Implemented: ORS 468A.025

Proposed Amendments: 340-200-0040

Last Date for Comment: 9-2-08, 5 p.m. (written comments); 9-9-08, 5 p.m.

Summary: Adopt new LRAPA Titles: 29, 31, 35, 37, 40, 41, 42, and 44. Amend existing LRAPA Titles: 12, 30, 32, 33, 34, 36, 37, 38, 46, 48, 49, and 50. Repeal existing LRAPA Title 35. Renumber existing LRAPA Title 37 to Title 44.

This rulemaking proposes to streamline and update the air quality permitting process by clarifying requirements, eliminating duplicative and conflicting standards, keeping rules in line with federal requirements, and correcting errors. If adopted, the proposed revisions would simplify, and better align rules with the Federal Clean Air Act while maintaining the same level of environmental protection and stringency.

To submit comments or request additional information, please contact Max Hueftle at the Lane Regional Air Protection Agency (LRAPA), 1010 Main Street, Springfield, Oregon 97474, toll free in Oregon at 877-285-7272 or (541) 736-1056 ext 231, or at max@lrapa.org or by fax 541-726-1205, or visit LRAPA's website: <http://www.lrapa.org/permitting/rulemaking/>

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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Department of Fish and Wildlife

Chapter 635

Rule Caption: Amend rules related to commercial fisheries, licenses, and gear.

Date:	Time:	Location:
9-12-08	8 a.m.	Pacific University, Main Campus Washburne Hall, D-6 2043 College Way Forest Grove, OR 97116

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 183, 496.118, 496.138, 496.146, 496.162, 506.109, 506.119, 506.129, 508.035, 508.235, 508.260, 508.406, 508.485, 508.490, 508.530, 508.535, 509.031 & 513.020

Stats. Implemented: ORS 496.162, 498.022, 506.129, 506.450 - 506.465, 507.030, 508.025, 508.035, 508.040, 508.260, 508.530, 508.535, 508.550, 508.921 & 508.941

Proposed Adoptions: Rules in 635-004, 635-005, 635-006, 635-041, 635-042

Proposed Amendments: Rules in 635-004, 635-005, 635-006, 635-041, 635-042

Proposed Repeals: Rules in 635-004, 635-005, 635-006, 635-041, 635-042

Last Date for Comment: 9-12-08

Summary: Amended rules to perform housekeeping and technical corrections to the regulations to ensure rule consistency.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Rule Caption: Amend rules related to commercial sales of out-of-state steelhead and walleye.

Date:	Time:	Location:
9-12-08	8 a.m.	Pacific University, Main Campus Washburne Hall, D-6 2043 College Way Forest Grove, OR 97116

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 506.119, 508.530 & 509.031

Stats. Implemented: ORS 498.022, 506.129, 508.535 & 508.550

Proposed Adoptions: Rules in 635-006

Proposed Amendments: Rules in 635-006

Proposed Repeals: Rules in 635-006

Last Date for Comment: 9-12-08

Summary: Amended rules to allow Oregon wholesale fish dealers to sell out-of-state steelhead trout or Walleye to retailers. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Rule Caption: Amend rules related to 2009 Oregon Sport Fishing Regulations.

Date:	Time:	Location:
9-12-08	8 a.m.	Pacific University, Main Campus Washburne Hall, D-6 2043 College Way Forest Grove, OR 97116

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Proposed Adoptions: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Proposed Amendments: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Proposed Repeals: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Last Date for Comment: 9-12-08

Summary: Amended rules to adopt sport fishing regulations for fin-fish, shellfish, and marine invertebrates for 2009. 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: Amend rules relating to Cervid diseases and products.

Date:	Time:	Location:
9-12-08	8 a.m.	Pacific University Washburne Hall 2043 College Way Forest Grove, OR 97116

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Proposed Amendments: Rules in 635-049

Last Date for Comment: 9-12-08

Summary: These amendments will put into rule a cervid disease surveillance list. The list includes diseases posing risk to cervids, cervid diseases posing risk to livestock, wildlife or humans, testing standards, test methods, prohibitions, and deadlines for required disease analysis and reporting. The list also addresses disease testing requirements and prohibitions for gamete or embryo transfer and importation.

These amendments will also remove the requirement that cervid part sales be reported in detail to ODFW.

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: Review, update and amend Fish and Wildlife Integrity Rules.

Date:	Time:	Location:
9-12-08	8 a.m.	Pacific University Washburne Hall 2043 College Way Forest Grove, OR 97116

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.308, 498.002, 498.022, 498.029, 498.052, 498.222, 498.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.308, 498.002, 498.022, 498.029, 498.052, 498.222, 498.242

Proposed Amendments: Rules in 635-056

Last Date for Comment: 9-12-08

Summary: Review, update and amend Fish and Wildlife Integrity Rules.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Department of Forestry Chapter 629

Rule Caption: Amends existing and creates new Forest Resource Trust programs for private and local government landowners.

Date:	Time:	Location:
8-26-08	9 a.m.	Oregon Dept. of Forestry 2600 State St., Bldg. D, Santiam Rm. Salem, OR 97310

Hearing Officer: Lanny Quackenbush

Stat. Auth.: ORS 526.700 & 293

Stats. Implemented: ORS 526.695 - 526.775

Proposed Adoptions: 629-022-0035, 629-022-0050, 629-022-0060, 629-022-0070, 629-022-0080, 629-022-0800, 629-022-0810, 629-022-0820, 629-022-0830, 629-022-0840, 629-022-0850

Proposed Amendments: 629-022-0030, 629-022-0040, 629-022-0110, 629-022-0120, 629-022-0130, 629-022-0140, 629-022-0150, 629-022-0160, 629-022-0200, 629-022-0210, 629-022-0220, 629-022-0230, 629-022-0250, 629-022-0300, 629-022-0320, 629-022-0380, 629-022-0390, 629-022-0400, 629-022-0410

Proposed Repeals: 629-022-0100, 629-022-0500, 629-022-0600, 629-022-0700

Last Date for Comment: 9-5-08, 5 p.m.

Summary: In 2007, the Oregon State Legislature passed new and revised statutory provisions for the Forest Resource Trust. The legislation created a Cost-Share Program for non-industrial private forest landowners and generalized the existing Stand Establishment Program as a Loan Program, with the option of extending eligibility for the Loan Program to qualified private and local government landowners. The proposed rulemaking creates new rules for the Forest Resource Trust Cost-Share Program and amends existing rules to generalize the current Stand Establishment Program as a Loan Program that, in addition to funding stand establishment projects on underproducing lands, provides financial assistance for other projects that lead to the improved management of forestlands. The proposed rulemaking allows other qualified private and local government landowners to be eligible to participate in the Loan Program and sets as a high priority the funding of projects or practices that are consistent with conservation plans and strategies of the Oregon Department of Fish and Wildlife. In addition to meeting a statutory requirement to adopt rules, the proposed rulemaking adopts other rule changes as recommended by the Forest Resource Trust Advisory Committee, provisions that: (i) allow the State Forester to grant exceptions to the Forest Resource Trust administrative rules; (ii) allow Forest Resource Trust programs to fund environmental restoration practices; and (iii) incorporate other definitions, amendments and rule organization changes.

Questions specific to the proposed rules may be directed to Lanny Quackenbush at lquackenbush@odf.state.or.us, 503-945-7478.

Rules Coordinator: Gayle Birch

Address: Department of Forestry, 2600 State St., Bldg. B, Salem, OR 97310

Telephone: (503) 945-7210

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Department of Human Services, Administrative Services Division and Director's Office Chapter 407

Rule Caption: Criminal History Check Rules for Department of Human Services Employees, Volunteers, and Contractors.

Date:	Time:	Location:
8-25-08	2-3 p.m.	Human Services Bldg. Rm. 137D 500 Summer St. NE Salem, OR 97301

Hearing Officer: Jennifer Bittel

Stat. Auth.: ORS 181.534, 181.537 & 409.050

Stats. Implemented: ORS 181.534 & 181.537

Proposed Adoptions: 407-007-0000, 407-007-0010, 407-007-0020, 407-007-0030, 407-007-0040, 407-007-0050, 407-007-0060, 407-007-0070, 407-007-0080, 407-007-0090, 407-007-0100

Proposed Amendments: 407-007-0210, 407-007-0270, 407-007-0330

Proposed Repeals: 407-007-0000(T), 407-007-0010(T), 407-007-0020(T), 407-007-0030(T), 407-007-0040(T), 407-007-0050(T), 407-007-0060(T), 407-007-0070(T), 407-007-0080(T), 407-007-0090(T), 407-007-0100(T), 407-007-0210(T), 407-007-0270(T), 407-007-0330(T)

Last Date for Comment: 8-27-08, 5 p.m.

Summary: This filing makes permanent temporary rules OAR 407-007-0000 to 407-007-0100, 407-007-0210, 407-007-0270, and 407-007-0330. These rules permanently implement the criminal history check process conducted on Department of Human Services employees, applicants, volunteers, and certain contractors. The only changes made to the temporary rules (most of which went into effect 3/31/08; OAR 407-007-0100 went into effect on 5/22/08.) are the following: addition of three potentially disqualifying conditions similar to conditions currently used for providers (false statement, unresolved arrests and diversion/conditional discharge); use of consistent language for "effective date of action"; and correction of appeals

NOTICES OF PROPOSED RULEMAKING

language to align with the Department of Justice Model rules for contested case hearings.

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

Address: 500 Summer St., NE, E-03, Salem, OR 97301

Telephone: (503) 947-5250

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Rule Caption: Corrections to OIT Substantiation Review Committee Composition and Actions in Children's Residential Care Rules.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Proposed Amendments: 407-045-0970

Last Date for Comment: 8-21-08, 5 p.m.

Summary: This rule was permanently filed, effective 5/30/08. During filing, two changes made during the public comment period were overlooked in the final text. Both are in reference to the Office of Investigations and Training (OIT) Substantiation Review Committee — changing the number of members from five to three and taking away the committee's power to change the basis of an abuse finding. This proposed rulemaking corrects these two omissions.

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

Address: 500 Summer St. NE, E-03, Salem, OR 97301

Telephone: (503) 947-5250

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
8-21-08	9:30 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.747, 418.785, 419B.005 - 419B.050 & 2007 OL Ch. 674

Proposed Amendments: 413-015-0205, 413-015-0409, 413-015-0415

Last Date for Comment: 8-26-08, 5 p.m.

Summary: OAR 413-015-0205 about the required screening activities is being amended to implement the provisions of Senate Bill 379, 2007 Or Laws ch 501, by restating the required screening activities when the report is an allegation of child abuse or neglect that occurred in a Children's Care provider. This rule is also being amended to restate the required screening activities regarding explanations to reporters of allegations of child abuse or neglect.

OAR 413-015-0409 about the exceptions to completing the child protective services (CPS) assessment activities is being amended to restate the Department's policy on the exceptions to completing the required CPS activities, to clarify the Department's policy and make the Department's policy consistent with the Department's practice.

OAR 413-015-0415 about the CPS assessment activities is being amended to restate the Department's policy regarding the required CPS assessment activities, to clarify the Department's policy and make the Department's policy consistent with the Department's practice.

These rules are also being amended to make permanent temporary rule changes made on June 28, 2008.

These rules are also being amended to avoid confusion by replacing old terminology with new terminology, adding cross-references to other rules and laws, and following standard formatting.

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

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
8-21-08	9 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005 & 418.625

Proposed Amendments: 413-100-0020

Last Date for Comment: 8-26-08, 5 p.m.

Summary: OAR 413-100-0020 is about the definitions that apply to the Department's Child Welfare Policy I-E.6.1, Substitute Care — Funding Eligibility Title IV-E Foster Care and General Assistance, OAR 413-100-0000 to 413-100-0320. This rule is being amended to implement ORS 418.625(3) as amended by SB 282 (2007) which changed the definition of foster home to include relative caregivers. This rule is being amended to restate the definition of the term "foster home" by no longer excluding relative caregivers from the definition of a foster home.

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

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

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
8-21-08	8:30 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.005 - 418.340

Proposed Amendments: 413-130-0070

Proposed Repeals: 413-130-0005

Last Date for Comment: 8-26-08, 5 p.m.

Summary: OAR 413-130-0005 about the values of the Adoption Assistance Program is being repealed to streamline the rules by removing unnecessary statements.

OAR 413-130-0070 about adoption assistance payments is being amended to restate the Department's policy about the adoption assistance payment for children under the age of eight years who have no documented medical, physical, mental, or emotional conditions, or other clinically diagnosed disability. These children would receive a reduced adoption assistance subsidy that would be below the basic foster care rate; or an "Agreement only" depending on the child's current needs and the adoptive family's circumstance. This rate would be negotiated between the adoptive family and the Department. This subsidy amount can subsequently be reassessed and adjusted at any time to reflect the child's current needs and the family's circumstances. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

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

Telephone: (503) 945-6067

NOTICES OF PROPOSED RULEMAKING

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

Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.

Date:	Time:	Location:
8-21-08	10 a.m.	500 Summer St. NE, Rm. 251 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Other Auth.: 20 CFR 416.1160 & Social Security Administration Program Operation Manual System SI 0130.115 & 01320.500

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Proposed Adoptions: 461-160-0552

Proposed Amendments: 461-160-0550, 461-160-0551

Last Date for Comment: 8-26-08, 5 p.m.

Summary: OAR 461-160-0550 is about income deduction for clients who do not receive SSI and who live in the community and have no children in the household group in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM), except Oregon Supplemental Income Program - Employed Persons with Disabilities (OSIP-EPD) and Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD). OAR 461-160-0551 is about income deduction for clients who do not receive SSI and who live in the community and do have children in the household group in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM), except Oregon Supplemental Income Program - Employed Persons with Disabilities (OSIP-EPD) and Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD). These rules are being amended to make the Department's rules consistent with federal regulations. These rules are also being amended to clarify the Department's policy regarding determining eligibility for the OSIP and OSIPM programs, including how to do income deductions including deeming. These rules are being amended to remove the General Assistance (GA), General Assistance Medical (GAM), and Qualified Medicare Beneficiaries (QMB) from these rules and to clarify deductions and deeming for adults and children in the OSIP and OSIPM programs. These rules are also being amended to clarify that an applying adult must be income eligible as an individual before any allocating or deeming can take place.

OAR 461-160-0552 about income deductions in the Qualified Medicare Beneficiaries program (QMB) is being adopted to state the Department's policy regarding income deductions in the QMB program. This rule is being adopted because the Department is amending OAR 461-160-0550 to remove the provisions about QMB from that rule, which is about income deductions for certain clients in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs.

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

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

Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.

Date:	Time:	Location:
8-21-08	10 a.m.	500 Summer St. NE, Rm. 251 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.700, 411.816, 412.006, 412.009, 412.014, 412.049, 414.042, 414.342, 2003 OL Ch. 212 & 2007 OL Ch. 861

Other Auth.: 7 USC 2014, 42 USC 602(a)(1)(B)(iii), 42 USC 1396p, 7 CFR 273.9, 7 CFR 280.1, 45 CFR 260.31, 45 CFR 260.50, Social Security Administration, Program Operations Manual Sec. SI 0815.350 & SI 01120.220 & Oregon Medicaid/State Children's Health Insurance Program (SCHIP) Health Insurance Waiver

Stats. Implemented: ORS 183.417, 411.060, 411.070, 411.105, 411.117, 411.700, 411.816, 411.825, 412.006, 412.009, 412.049, 412.124, 414.025, 414.042, 414.342, 1999 OL Ch. 859, 2003 OL Ch. 212 & 2007 OL Ch. 861

Proposed Adoptions: 461-190-0199

Proposed Amendments: 461-001-0000, 461-001-0035, 461-101-0010, 461-110-0370, 461-115-0030, 461-120-0130, 461-120-0510, 461-130-0310, 461-135-0010, 461-135-0082, 461-135-0400, 461-135-0493, 461-135-0494, 461-135-0506, 461-135-0930, 461-135-0990, 461-135-1235, 461-140-0296, 461-145-0080, 461-145-0130, 461-145-0150, 461-145-0330, 461-145-0380, 461-145-0410, 461-145-0470, 461-145-0490, 461-145-0600, 461-155-0020, 461-155-0150, 461-155-0190, 461-155-0250, 461-155-0360, 461-155-0660, 461-160-0040, 461-160-0200, 461-160-0420, 461-160-0430, 461-160-0610, 461-165-0060, 461-170-0015, 461-170-0020, 461-170-0100, 461-170-0101, 461-170-0150, 461-175-0340, 461-180-0070, 461-190-0211, 461-190-0231

Proposed Repeals: 461-115-0015, 461-135-0401, 461-190-0195

Proposed Ren. & Amends: 461-145-0265 to 461-145-0145

Last Date for Comment: 8-26-08, 5 p.m.

Summary: OAR 461-001-0000 about the definition of terms is being amended to restate the definition for the term "basic decision notice" in the Department's public assistance, medical, and Food Stamp programs. This rule is also being amended to restate the definition for the term "nonstandard living arrangement" in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs.

OAR 461-001-0035 about definitions of terms used in the Oregon Supplemental Income Program-Employed Persons with Disabilities (OSIP-EPD) program and Oregon Supplemental Income Program Medical-Employed Persons with Disabilities (OSIPM-EPD) program is being amended to remove the definitions of cost share and premium and add a definition of participant fee. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-101-0010 about program acronyms is being amended to comply with the Food, Conservation, and Energy Act of 2008. Changing this rule introduces the new federal name of the Food Stamp program. This rule is also being amended to remove references to Employment Related Day Care-Student Block Grant (ERDC-SBG) and Student Child Care Program to bring policies up to date as this program is no longer administered by the Department of Human Services. It was moved to Oregon Student Assistance Commission effective December 31, 2007.

OAR 461-110-0370 about filing groups in the Food Stamp program, OAR 461-155-0190 about income and payment standards in the Food Stamp program, and OAR 461-160-0430 about income deductions in the Food Stamp program are being amended to comply with Food, Conservation, and Energy Act of 2008 by implementing the annual increase in the standards for the Food Stamp program.

OAR 461-115-0015 and 461-135-0401 are being repealed and OAR 461-115-0030, 461-120-0130, 461-135-0400, 461-155-0150, 461-160-0040, 461-170-0015, 461-170-0150, and 461-180-0070 are being amended to remove references to Employment Related Day Care-Student Block Grant (ERDC-SBG) and Student Child Care Program to bring policies up to date as this program is no longer administered by the Department of Human Services. This program was moved to Oregon Student Assistance Commission effective December 31, 2007.

OAR 461-120-0510 about the age requirements for clients to receive benefits in the Department's public assistance, medical, and

NOTICES OF PROPOSED RULEMAKING

Food Stamp programs is being amended to restate the Department's policy regarding which individuals may be eligible for the Refugee Assistance (REF) program. This rule is being amended to add refugees who are part of an ineligible TANF filing group to the individuals who may be eligible for the REF program, and to clarify that in order to be eligible for the REF program a minor must be legally emancipated.

OAR 461-130-0310 is about the participation categories of exempt mandatory and volunteer in the employment programs of the Department's Food Stamp, Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee Assistance (REF), and Temporary Assistance for Needy Families (TANF) programs. This rule is being amended to comply with federal regulations by removing the "not attending school full time" requirement from the parental exemption from participation when the parent is caring for a family member who lives at home and has a disability.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to clarify the Department's policy and make the Department's policy consistent with the Department's practice. This rule is being amended to clarify that clients who receive Oregon Health Plan standard benefits (OHP-OPU) who become pregnant are assumed eligible for Medicaid once they have documented their pregnancy, and that OHP-OPU clients who become pregnant will be converted to OHP-OPP as an assumed eligible Medicaid client.

OAR 461-135-0082 about the eligibility for the Refugee Case Services Program is being amended to replace old terminology with new terminology and eliminate unnecessary wording.

OAR 461-135-0493 and 461-135-0494 are about the eligibility criteria and benefit amount for the Disaster Food Stamp program and how to treat households that are already receiving food stamp benefits. These rules are being amended to incorporate new guidance for the program received from the United States Department of Agriculture, Food and Nutrition Services (FNS). The list of disaster-related expenses in OAR 461-135-0493 is being expanded and the cost of food as an expense is being removed. A cross reference for the replacement of destroyed food purchased with food stamp benefits is being added to OAR 461-135-0494, which is also being amended to clarify the calculation of disaster benefits for households who are already receiving food stamp benefits.

OAR 461-135-0506 about the Transitional Benefits Alternative (TBA) is being amended to state that households that receive state-funded cash assistance from the Temporary Assistance for Needy Families (TANF) program are now eligible to receive TBA benefits when they leave TANF. Without this amendment, TBA eligibility is limited to households that received cash assistance funded by Title IV-A of the Social Security Act.

OAR 461-135-0930 about the medical coverage for the Refugee Assistance Medical (REFM) program is being amended to replace old terminology with new terminology and eliminate unnecessary wording.

OAR 461-135-0990 about reimbursing clients in certain medical programs for the cost of health insurance premiums sponsored by the client's employer is being amended to change the Department's policy for the Refugee Assistance Medical (REFM) program. This rule is being amended so that the Department will not reimburse REFM clients for the cost of employer sponsored health insurance premiums.

OAR 461-135-1235 about hearing rights in the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program is being amended to replace old terminology with new terminology.

OAR 461-140-0296 about the length of disqualification due to an asset transfer in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets. This amount is calculated by using the average monthly cost to a private patient of nursing facility services in Oregon.

OAR 461-145-0080 about the treatment of child support and cash medical support in the Department's public assistance, medical, and

Food Stamp programs is being amended to implement the provisions of HB 2469, 2007 Or. Laws ch. 861, by restating the treatment of child support in the Food Stamp, Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee Assistance (REF), Refugee Assistance Medical (REFM), Medical Coverage for Children in Substitute or Adoptive Care (SAC), and Temporary Assistance for Needy Families (TANF) programs. This rule is also being amended to define the terms "pass through" and "disregard" and state when clients may receive a pass-through or disregard of their child support.

OAR 461-145-0130 about the treatment of earned income in the Department's public assistance, medical, and Food Stamp programs is being amended to restate the Department's policy on the treatment of the income of temporary employees of the U.S. Census Bureau employed to assist in taking the census. This rule is also being amended to restate the Department's policy regarding the treatment of earned income in the Medical Assistance Assumed (MAA) and Medical Assistance to Families (MAF) programs. This rule is being amended to implement the provisions of HB 2469 (2007 Or Laws Ch 861) by clarifying that an increase in hours of employment or increased earnings is excluded for individuals who are currently receiving MAA or MAF medical benefits and who go over the income limit prior to meeting three of six months MAA or MAF eligibility. Currently, an individual must meet the last three of six months MAA or MAF eligibility in order to be eligible for EXT. With the new amendment, the Department can exclude income in order for the client to be eligible for EXT. This will allow at least six months extended medical benefits.

OAR 461-145-0150 about the treatment of educational income is being amended to state the Department's policy for the treatment of educational income for the Parents as Scholars (PAS) component of the Job Opportunity and Basic Skills Program (JOBS) program.

OAR 461-145-0265 about the treatment of educational accounts is being amended and renumbered as 461-145-0145 to comply with the Food, Conservation, and Energy Act of 2008 by restating the Department's policy on the treatment of Educational Accounts in the Food Stamp program.

OAR 461-145-0330 about the treatment of loans and interest on loans in the Department's public assistance, medical, and Food Stamp programs is being amended to align the Department's policy with federal policy by restating the Department's policy on the treatment of loans and interest on loans.

OAR 461-145-0380 about the treatment of pension and retirement plans is being amended to comply with the Food, Conservation, and Energy Act of 2008 by restating the Department's policy on the treatment of pension and retirement plans in the Food Stamp program.

OAR 461-145-0410 about the treatment of program benefits is being amended to revise the Department's policy on the treatment of Oregon Supplemental Income Program-Independent Choices (OSIP-IC) benefits in the Food Stamp program.

OAR 461-145-0470 about the treatment of shelter-in-kind income is being amended to restate the Department's policy related to counting shelter-in-kind income when prorated standards are used in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. This rule is being amended to clarify that shelter-in-kind income is not counted in situations where prorated standards are used.

OAR 461-145-0490 about the treatment of Social Security Benefits is being amended to restate the Department's policy on the treatment of representative payee fees in the Food Stamp program. This rule is being amended to restate the Department's policy and make the Department's policy consistent with the Department's practice by restoring wording present in the rule prior to April 1, 2008. This change will clarify that the representative payee fee paid by a client who is required by the Social Security Administration to receive payments through a representative payee is excluded for food stamps.

OAR 461-145-0600 about the treatment of work-related capital assets, equipment and inventory in the Department's public assistance, medical and Food Stamp programs is being amended to restate

NOTICES OF PROPOSED RULEMAKING

the Department's policy on the treatment of capital assets in the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs.

OAR 461-155-0020 about prorated standards based on the adjusted number in the household in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and the Temporary Assistance to Needy Families (TANF) programs is being amended to align the Department's policy with federal policy by restating the Department's policy regarding the use of prorated standards to determine eligibility for OSIP, OSIPM, and TANF. This rule is also being amended to clarify current policy by stating that even when prorated standards do not apply in the OSIP and OSIPM programs, shelter-in-kind (see OAR 461-145-0470) may still be applicable, and by stating additional requirements for determining the adjusted number in the household.

OAR 461-155-0250 about the income and payment standards in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to restate the Department's policy on the income standards that apply to clients in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs. OAR 461-155-0250 is being amended to specify that the non-SSI OSIP and OSIPM standard in section (3) of the rule does not apply to clients in the Oregon Supplemental Income Program-Employed Persons with Disabilities (OSIP-EPD) and Oregon Supplemental Income Program Medical-Employed Persons with Disabilities (OSIPM-EPD) programs. The rule specifies that the income standard in section (6) of the rule applies to clients in the OSIP-EPD and OSIPM-EPD programs.

OAR 461-155-0360 about determining the cost-effectiveness of employer-sponsored health insurance plans in certain medical programs is being amended to change the Department's policy for the Refugee Assistance Medical (REFM) program. This rule is being amended so that the Department will not reimburse REFM clients for the cost of employer sponsored health insurance premiums.

OAR 461-155-0660 regarding accommodation allowance special need for individuals under the Oregon Supplemental Income Program Medical (OSIPM, aid to the elderly and people with disabilities) is being amended to clarify the eligibility criteria for the accommodation allowance special need. The intent of the rule has always been to provide funds to maintain an individual's home when the individual is or will be receiving in-home long term care services, and the rule is being amended to clarify this coverage.

OAR 461-160-0200 about the unearned income exclusion for child support and spousal support payments in the Medical Assistance to Families (MAF) and Substitute and Adoptive Care (SAC) programs is being amended to support program alignment. Effective October 1, 2008, the TANF program (as required by HB 2469) will implement a child support disregard by excluding up to \$50 per dependent child or minor parent per financial group per month, not to exceed \$200 per financial group per month. To support program policy alignment, the Department needs to amend this rule to match the TANF child support disregard program policy change. Additionally, this rule is being amended to clarify that the child support disregard is excluded income rather than a deduction and therefore not included in the countable income calculation. This rule is also being amended to include all child support exclusions affecting the MAF and SAC programs in the same rule.

OAR 461-160-0420 about how to calculate the shelter cost in the Food Stamp program is being amended to reflect the annual change in the Standard Utility Allowances. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the Food Stamp Program State Plan. There are four utility allowances. The full utility allowance (FUA) is for those households that have heating and cooling costs. The limited utility allowance (LUA) is for those households with more than one non-heating/cooling utility costs. The individual utility allowance (IUA) is for those households with a single non-heat

cost. The single utility allowance (TUA) is for those households with only a telephone cost.

OAR 461-160-0610 regarding which individuals must pay a liability in order to receive long term care services under the Oregon Supplemental Income Program Medical (OSIPM, aid to the elderly and people with disabilities) is being amended to delete the cross-reference to OAR 461-135-0811 because that rule has been repealed.

OAR 461-165-0060 about minimum benefit amounts is being renamed and is being amended to restate how the minimum benefit amount for the Food Stamp program is determined.

OAR 461-170-0020 about changes that must be reported in the Food Stamp, Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs is being amended to comply with the Food, Conservation, and Energy Act of 2008. This rule is being amended to restate the reporting requirements for clients in the Food Stamp program who are assigned to the simplified reporting system. This rule is being amended to remove the requirement to report income over 185 percent of the federal poverty level for households in which all members are elderly or have disabilities and there is no earned income. This rule is also being amended to restate the reporting requirements for clients in the REFM program.

OAR 461-170-0100 about the criteria for using the monthly reporting system is being amended to change the Department's policy for using the monthly reporting system for the Refugee Assistance Medical (REFM) program. This rule is being amended to remove REFM from the list of programs that can be assigned to the monthly reporting system.

OAR 461-170-0101 is about the simplified reporting system (SRS) used in the Food Stamp program. This rule is being amended to restate the Department's policy on the length of time that households containing migrant or seasonal farm workers or homeless individuals may be certified for food stamps in the simplified reporting system. This amendment allows such households to be certified for 12 months. Prior to this change these groups were limited to six-month certifications.

OAR 461-175-0340 about the type of decision notice that is required when an individual makes a voluntary decision to withdraw, reduce, or end benefits is being amended to restate the Department policy about what type of decision notice is required when an individual makes a voluntary decision to withdraw, reduce, or end benefits in programs other than the Food Stamp program. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-190-0195 about the Degree Completion Initiative (DCI) component of the Job Opportunity and Basic Skills Program (JOBS) is being repealed because this rule is no longer necessary as DCI is a pilot program and will be replaced by Parents as Scholars (PAS) component of the JOBS program.

OAR 461-190-0199 about the Parents as Scholars (PAS) component of the Job Opportunity and Basic Skills Program (JOBS) is being adopted to implement 2003 Or. Laws ch. 212 and 2007 Or. Laws ch. 861 by establishing eligibility criteria for the PAS component of the JOBS program. PAS will replace the Degree Completion Initiative (DCI) component of the JOBS Program on October 1, 2008. PAS will allow the Department to support clients eligible for Temporary Assistance for Needy Families (TANF) who are or will be undergraduates in beginning or continuing a two- or four-year degree program at an approved school.

OAR 461-190-0211 about the standards for support service payments is being amended to restate the Department's policy on paying for books and supplies for educational needs.

OAR 461-190-0231 about the re-engagement process in the Job Opportunity and Basic Skills (JOBS), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee Assistance (REF), State Family Pre-SSI/SSDI Program (SFPSS), and Temporary Assistance for Domestic Violence Survivors (TA-DVS) programs is being amended to state the Department's policy regarding the consequences of

NOTICES OF PROPOSED RULEMAKING

unsuccessful reengagement for a participant in the Parents as Scholars (PAS) component of the JOBS program.

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

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,
Division of Medical Assistance Programs
Chapter 410**

Rule Caption: Regulations about payment to and from unit of government public providers (public entities).

Date:	Time:	Location:
8-19-08	10:30 a.m.	HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-133-0090, 410-133-0100, 410-133-0220, 410-0138-0080, 410-138-0380, 410-138-0560, 410-138-0680, 410-138-0740, 410-138-0780

Proposed Repeals: 410-133-0090(T), 410-133-0100(T), 410-133-0220(T), 410-0138-0080(T), 410-138-0380(T), 410-138-0560(T), 410-138-0680(T), 410-138-0740(T), 410-138-0780(T)

Last Date for Comment: 8-24-08

Summary: The School-Based Health Services program and Targeted Case Management program administrative rules govern payments for services provided to certain clients. Having temporarily amended the rules listed above, DMAP will permanently amend these rules for coordination and consistency of the payment obligations between DHS and public providers responsible for public funds (called the local match) to match federal funds that reimburse covered services. These rules inform current and potential public providers that participate in providing local match funds about the public entity payment process and the timing of public fund payments. Text may be revised for readability and "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

Telephone: (503) 945-6927

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Rule Caption: Amending Provider Tax Rules to Clarify Penalties, Reports, and Notices.

Stat. Auth.: ORS 409.050, 410.070 & 411.060

Stats. Implemented: ORS 409.750 & 2003 OL Ch. 736 § 2, 19, 20, & 50

Proposed Amendments: 410-050-0190, 410-050-0491, 410-050-0511, 410-050-0750, 410-050-0810

Proposed Repeals: 410-050-0750(T)

Last Date for Comment: 8-21-08, 5 p.m.

Summary: The provider tax rules are being amended to provide greater clarification as to when the Department will issue a "Notice of Proposed Action." The rules provide that in all cases where the Department has determined a deficiency or failure to report has occurred, a "Notice of Proposed Action" will not be issued if the matter is resolved satisfactorily within 59 days from the date of mailing the 30 day notification letter.

OAR 410-050-0491, long term care provider tax rule, is being amended to clarify that long term care facilities which are exempt from paying provider taxes are not exempt from the requirement to file an annual cost report or revenue report and that failing to file the reports when due subjects the facility to a penalty of up to \$500 per day of delinquency.

The temporary rule, OAR 410-050-0750, is being permanently amended to correct a typographical error — changing the term "and" to "or."

Rules Coordinator: Jennifer Bittel

Address: 500 Summer St. NE, E-03, Salem, OR 97301

Telephone: (503) 947-5250

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

Rule Caption: In-Home Services, Independent Choices Program.

Date:	Time:	Location:
8-19-08	2 p.m.	Human Service Bldg. Rm. 137AB 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Proposed Adoptions: 411-030-0100

Proposed Amendments: 411-030-0020, 411-030-0040, 411-030-0050, 411-030-0070

Proposed Repeals: 411-036-0000, 411-036-0010, 411-036-0020, 411-036-0030, 411-036-0040, 411-036-0045, 411-036-0050, 411-036-0060, 411-036-0070, 411-036-0080, 411-036-0090, 411-036-0100, 411-036-0110, 411-036-0120, 411-036-0130, 411-036-0140, 411-030-0020(T), 411-030-0040(T), 411-030-0050(T), 411-030-0070(T), 411-030-0100(T), 411-036-0000(T), 411-036-0010(T), 411-036-0020(T), 411-036-0030(T), 411-036-0040(T), 411-036-0045(T), 411-036-0050(T), 411-036-0060(T), 411-036-0070(T), 411-036-0080(T), 411-036-0090(T), 411-036-0100(T), 411-036-0110(T), 411-036-0120(T), 411-036-0130(T), 411-036-0140(T)

Last Date for Comment: 8-22-08, 5 p.m.

Summary: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to permanently suspend the Independent Choices Program (ICP) demonstration project rules in OAR chapter 411, division 036 and permanently adopt and amend other various in-home services rules in OAR chapter 411, division 030 to clarify how they apply to ICP and to reflect that the ICP is now a permanent statewide n-home services program with an enrollment capacity of 2,600 participants.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 945-6398

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Rule Caption: Implement HB 2371 — 24 Hour Residential Services for Children and Adults with Developmental Disabilities.

Date:	Time:	Location:
8-18-08	10:30 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137AB Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 409.050, 410.070 & 443.450

Other Auth.: HB 2371 (2007), 2007 OL Ch. 205

Stats. Implemented: ORS 443.400 - 443.455

Proposed Adoptions: 411-325-0185

Proposed Amendments: 411-325-0230, 411-325-0270, 411-325-0280

Last Date for Comment: 8-22-08, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to update the 24 hour residential services for children and adults with developmental disabilities rules in OAR chapter 411, division 325 to implement House Bill 2371.

The proposed rules clarify and strengthen emergency and disaster planning requirements for developmental disability 24 hour residential services by requiring providers to put emergency systems in place that will allow the counties to provide support to the individuals they serve and the providers they contract with in the event of an emergency or disaster.

NOTICES OF PROPOSED RULEMAKING

SPD is planning to implement these proposed changes on September 1, 2009.

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: Clarifies requirements for periodic review and modification, passport restriction and support distribution and disbursement.

Stat. Auth.: ORS 25.020, 25.625, 180.345 & 416.455

Stats. Implemented: ORS 25.020, 25.080, 25.150, 25.287, 25.321 - 25.343, 25.625, 107.135, 416.425, 418.032 & 418.042

Proposed Amendments: 137-055-3420, 137-055-4540, 137-055-6010, 137-055-6022

Last Date for Comment: 9-19-08, 5 p.m.

Summary: OAR 137-055-3420 is being amended to clarify that a periodic review to ensure compliance with the child support guidelines will be initiated on a support order for a family receiving Temporary Assistance to Needy Families (TANF) when the order is at least 35 months old. The rule is also being amended to provide that such a review may be initiated on a support order for a family who is not receiving TANF when the order is at least 35 months old.

OAR 137-055-4540 is being amended to clarify that a passport which has been denied because of nonpayment of child support will not be reinstated unless the arrears are paid in full or there is a life or death reason to reinstate the passport. The rule is also being amended to clarify that the passport will not be restricted if the sole reason for arrears is an upward modification or order for past support.

OAR 137-055-6010 is being amended to add a definition of "pass-through." This amendment goes with the amendment to OAR 137-055-6022, and is to implement disbursement of identified assigned support payments to families beginning in October of 2008.

OAR 137-055-6022 is being amended to describe the manner in which assigned support will be disbursed to families beginning in October of 2008.

Rules Coordinator: Vicki Tungate

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

Telephone: (503) 986-6086

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Department of State Lands
Chapter 141

Rule Caption: Revising rules governing leases and licenses for removing aggregate from state-owned submerged-submersible land.

Date:	Time:	Location:
8-26-08	1-3 p.m.	State Lands Bldg., Land Board Rm. 775 Summer St. NE Salem, OR

Hearing Officer: Jeff Kroft

Stat. Auth.: ORS 183 & 273

Other Auth.: OR Const., Article VIII, Sec. 5

Stats. Implemented: HB 2688 (2003) & SB 311 (2003)

Proposed Adoptions: 141-014-0200 - 141-014-0430

Proposed Repeals: 141-014-0070 - 141-014-0120

Last Date for Comment: 9-12-08, 5 p.m.

Summary: These proposed rules govern the granting of leases and licenses for the removal of material (rock, sand, gravel and silt) from state-owned submerged and submersible land. The rules currently in force were last amended in 1991. Since that time, Department staff and persons requesting leases and licenses to remove material have identified a number of changes that need to be made to the existing rules to make them easier to use and understand, and to address the legislative changes being proposed, the Department decided to develop new rules governing this activity, and will rescind the current rules

(OAR 141-014-0120) at such time that new rules are adopted by the Land Board.

Among the changes proposed in these rules are:

(1) Numerous new definitions are added to clarify rule requirements.

(2) The exemptions provided by statute for the payment of compensation to the Department for the removal of material are clearly listed. Similarly, the activities subject to payment of compensation are also described in greater detail.

(3) A "take or pay" policy is proposed that requires a lessee to pay a minimum amount of compensation provided by rule to prevent the "banking" of rock, sand, gravel and silt (material) resources.

(4) Three different processes are established relating to offering a lease or license, if requested, based on the location of the material.

(5) Unless specifically exempted by the Department, a lessee will be required to report the amount of material removed in cubic yards, not on a weight basis.

(6) The compensation owed for the removal of material will be adjusted annually based on the annual change in the United States Department of Labor's Producer Price Index #1441 for Construction Sand and Gravel.

Rules Coordinator: Elizabeth Martino

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

Telephone: (503) 986-5239

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

Rule Caption: Removes References to Honorary Consular Corps Registration Plates to Conform DMV Rules with Law Change.

Date:	Time:	Location:
8-18-08	10 a.m.	355 Capitol St. NE, Rm. 122 Salem, OR 97301

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 1987 OL, Ch. 25

Stats. Implemented: ORS 805 & 1987 OL Ch. 25

Proposed Amendments: 735-046-0000, 735-046-0010, 735-046-0050

Last Date for Comment: 8-21-08

Summary: Oregon Laws 1987, Chapter 25 repealed the statutory authority for DMV to issue Honorary Consular Corps vehicle registration plates. The proposed amendments to OAR 735-046-0010 and 735-046-0050 delete references to the issuance of Honorary Consular Corps vehicle registration plates from DMV's special registration plate rules. The amendments to OAR 735-046-0000 reorganize and clarify the definitions set out in the rule.

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Rule Caption: Deletes Four to Eight Year License Rule; Amends When DMV May Reissue or Replace.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.024, 807.045, 807.050, 807.070, 807.160 & 2008 OL, Ch. 1

Stats. Implemented: ORS 807.160, 807.024, 807.045, 807.220, 807.230, 807.280, 807.400 & 2008 OL, Ch. 1

Proposed Amendments: 735-062-0092, 735-062-0110, 735-062-0200

Proposed Repeals: 735-062-0095

Last Date for Comment: 8-21-08

Summary: OAR 735-062-0095 establishes how DMV will transition from driver licenses that are valid for four years to licenses that are valid for eight years. That transition period began on October 1, 2000

NOTICES OF PROPOSED RULEMAKING

and ends on October 1, 2008. DMV is proposing to repeal OAR 735-062-0095 effective October 1, 2008 as it will no longer be needed.

OAR 735-062-0110 establishes when DMV will issue a replacement driver permit, driver license or identification card. Currently, OAR 735-062-0110(2)(L) authorizes DMV to issue a replacement driver license or driver permit if a person obtains a driver license or driver permit in another state and then moves back to Oregon before the Oregon privileges expire or within one year of their expiration. OAR 735-062-0200 currently authorizes DMV to replace or renew an Oregon CDL if the person obtains a CDL in another state and then moves back to Oregon before the Oregon CDL expires or within one year of its expiration. DMV is proposing to change this policy because Oregon driving privileges should end when another state issues driving privileges to a person. This helps to ensure that each person has only one driver license. In addition, this change will allow a more accurate count of Oregon drivers and will clarify for law enforcement when a person no longer has driving privileges granted by Oregon.

Beginning October 1, 2008, DMV will invalidate the person's driving privileges or identification card in Oregon upon notice from another state that an Oregon driver permit, driver license or identification card was surrendered to another state and the person obtained driving privileges or an identification card in the other state. The person will no longer be eligible for a replacement Oregon driver permit, driver license or identification card when the person returns to Oregon, but must reapply for Oregon driving privileges or an identification card as would any other person moving to Oregon from another state. DMV proposes to amend OAR 735-062-0110 by removing the subsection that allows DMV to issue a Class-C replacement driver license or driver permit to a person who obtains driving privileges in another jurisdiction and then returns to Oregon. DMV proposes to amend OAR 735-062-0200 by removing the sections that currently authorize a replacement or renewal of an Oregon CDL when a person surrenders an Oregon CDL to another jurisdiction and then reapplies for a CDL in Oregon.

Under certain circumstances, DMV will reissue a driver license, driver permit or identification card for no-fee if the applicant does not receive it in the mail. DMV proposes to amend OAR 735-062-0092 to specify when a driver license, driver permit or identification card will be reissued. DMV also proposes to amend OAR 735-062-0110 to clarify when a person must purchase a replacement license if the person's address has changed and the driver license, driver permit or identification card was not received in the mail.

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

Rules Coordinator: Lauri Kunze

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

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Rule Caption: Regarding Period Sno-Park Permits Required, Removes Reference to "November 15," adds "November 1."

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.600, 811.595 & 2007 OL, Ch. 810

Stats. Implemented: ORS 802.600, 810.170, 811.590, 811.595, 811.600 & 2007 OL, Ch. 810

Proposed Amendments: 735-080-0000

Last Date for Comment: 8-21-08

Summary: This rulemaking is needed to implement legislation enacted by the 2007 Legislative Assembly:

Chapter 810, Oregon Laws 2007 (SB 566) amended ORS 811.590, in part, to extend the period Sno-Park permits are required in order to park a vehicle in a winter recreation parking area under ORS 810.170. The extended period begins November 1, 2008.

DMV proposes to amend OAR 735-080-0000 to delete reference to "November 15" and replace it with "November 1." The amendment will conform DMV's rule to the law change. Other, non-substantive changes are made to improve readability.

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Department of Transportation, Highway Division Chapter 734

Rule Caption: Maximum width of a manufactured home that may be moved on Oregon's highways.

Date:	Time:	Location:
8-18-08	11 a.m.	355 Capitol St. NE, Rm. 122 Salem, OR 97301

Hearing Officer: Martin Loring

Stat. Auth.: ORS 183.390, 184.616, 184.619, 810.060 & 818.200

Stats. Implemented: ORS 818.200 & 818.220

Proposed Amendments: 734-075-0010

Last Date for Comment: 8-21-08

Summary: Division 75 of chapter 734 of Oregon Administrative Rule (OAR) limits the movement of over-dimensional mobile homes and modular building units on Oregon's highways. The current permanent rule version of OAR 734-075-0010 prohibits movements of manufactured homes wider than 16 feet at the base and 18 feet overall under any circumstance. Since April 24, 2008, a temporary rule has allowed larger units to be moved under some circumstances.

Representatives of the manufactured home industry argue that this temporary rule needs to be made permanent to capture significant economic benefit for Oregon. They also argue that since Division 82 allows movement of non-divisible loads wider than 16 feet at the base and 18 feet overall, fairness requires similar flexibility in Division 75 (regulating the movement of manufactured homes).

A petition for permanent rulemaking was received from CMH Manufacturing West, Inc. (Marlette Homes) stating that without permanent rule changes, Marlette will not be able to obtain a contract to manufacture 150 homes needed for a development to house oil field workers in Alberta, Canada. This statement was not accurate in that the contract was awarded based on the temporary rule. However, manufacturing of the first three homes began the week of June 16. Each home takes 6-7 days to build, and shipping is likely to start the third or fourth week of July. Shipping volume is expected to be 3-5 homes a week, and it will take over a year to complete this contract. Thus, performance under this contract will not be possible unless these permanent rule amendments are adopted. This petition was supported by a letter from the Oregon Manufactured Home Association reiterating the economic benefit of the rule change and arguing for harmonization of the way ODOT deals with all over-dimensional loads.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Economic and Community Development Department Chapter 123

Rule Caption: These rules have been revised to clarify procedural standards for contracts.

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285A.075 & 279A.070

Proposed Amendments: 123-006-0005, 123-006-0015, 123-006-0020, 123-006-0025, 123-006-0030, 123-006-0035, 123-006-0040

Last Date for Comment: 8-21-08

Summary: The proposed administrative rule change broadens the application of these rules beyond just personal services, to cover all procurement, to match the expansion of the department's contracting authority in SB 350 (2007). These rules have been revised and changed for clarity.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Janelle Lacefield
Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

Rule Caption: Amend rules related to Distressed Areas to update distressed area determination methodology.

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285A.020 & 279A.075

Proposed Amendments: 123-024-0001, 123-024-0011, 123-024-0031

Proposed Repeals: 123-024-0041

Last Date for Comment: 8-21-08

Summary: The proposed administrative rule change addresses the methodology of determining a distressed area. Previous rules were unclear as to the factors used in determination. The new rules clarify the four factors the department uses to determine a distressed area and gives greater detail in how the methodology is used.

Rules Coordinator: Janelle Lacefield

Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

Rule Caption: These rules have been revised to add additional language to include grants for water protection fund.

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285A.213

Proposed Amendments: 123-049-0005, 123-049-0060

Last Date for Comment: 8-21-08

Summary: These rules have been revised to add additional language under 123-049-0060 to include grants for the water protection fund.

Rules Coordinator: Janelle Lacefield

Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

Rule Caption: Amend rules related to changes brought about by Senate Bill 350 (2007) & clarified rules.

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285B.230, 285B.269, 285B.236 & 285B.242

Proposed Amendments: 123-055-0100, 123-055-0120, 123-055-0200, 123-055-0220, 123-055-0240, 123-055-0300, 123-055-0340, 123-055-0400, 123-055-0420, 123-055-0440, 123-055-0460, 123-055-0525, 123-055-0620, 123-055-0900

Last Date for Comment: 8-21-08

Summary: The proposed administrative rule change addresses the statutory changes implemented in SB 350 (2007 Legislature). In addition rules have been clarified. Content for Regional Investment Strategy has been revised for clarify as well as language covering plan development.

Rules Coordinator: Janelle Lacefield

Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

Rule Caption: Amend rules related to changes brought about by Senate Bill 350 (2007) & clarified rules.

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285B.260, 285B.263 & 285B.239

Proposed Amendments: 123-057-0110, 123-057-0130, 123-057-0150, 123-057-0190, 123-057-0210, 123-057-0230, 123-057-0330, 123-057-0350, 123-057-0410, 123-057-0430, 123-057-0450, 123-057-0470, 123-057-0510, 123-057-0530, 123-057-0710

Proposed Repeals: 123-057-0310

Last Date for Comment: 8-21-08

Summary: The proposed administrative rule change addresses the statutory changes implemented in SB 350 (2007 Legislature). In addition rules have been clarified. Rural Investment Fund language has been removed due to the changes from SB 350 and language has been added for the Rural Set Aside Action plan as added by statute.

Rules Coordinator: Janelle Lacefield

Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

Oregon Department of Education Chapter 581

Rule Caption: Establishes process for districts, schools and programs to appeal finding of financial report.

Stat. Auth.: ORS 326.051 & 327.125

Stats. Implemented: ORS 326.111 & 327.006 - 327.133

Proposed Amendments: 581-001-0100

Last Date for Comment: 8-27-08, 5 p.m.

Summary: Establishes process for school districts, education service districts, public charter schools and education programs to challenge the overpayment or underpayment of funds based on information in an audit or other report. The process is two steps. The first step is an appeal of the determination and methodology and the second step is an appeal of time period for repayment.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Updates language relating to persons with disabilities.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 343

Proposed Amendments: 581-010-0200, 581-015-2000, 581-015-2200, 581-015-2240, 581-015-2255, 581-015-2390, 581-015-2400, 581-015-2555, 581-015-2575, 581-015-2580, 581-015-2815, 581-016-0920, 581-019-0005, 581-019-0030, 581-019-0075, 581-021-0200, 581-021-0260, 581-022-1340, 581-049-0010, 581-053-0545, 581-060-0005, 581-070-0220

Last Date for Comment: 8-27-08, 5 p.m.

Summary: Changes archaic references to disabled or handicapped persons to persons with disabilities.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend to allow Oregon university/college logo giftware and apparel sales in exclusive liquor stores.

Date:	Time:	Location:
8-22-08	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman

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

Stats. Implemented: ORS 471.750(1)

Proposed Amendments: 845-015-0143

Last Date for Comment: 9-5-08

Summary: Based on a recommendation from the Agent Compensation Task Force, subsequent agent survey, and work group discussions, staff proposes amendment of this rule to add one additional item to the approved list of items that can be sold in an exclusive retail liquor store: Oregon university/college logo giftware and apparel.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

NOTICES OF PROPOSED RULEMAKING

Oregon Medical Board Chapter 847

Rule Caption: Requires the years of practice under multiple Limited Licenses, Medical Faculty to be consecutive.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100 & 677.132

Proposed Amendments: 847-010-0052, 847-010-0063, 847-020-0140

Last Date for Comment: 8-28-08

Summary: The proposed rules change requires the years of practice under Limited Licenses, Medical Faculty to be consecutive. The proposed rule change also consolidates rule language to reduce redundancy.

Rules Coordinator: Diana M. Dolstra

Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

Telephone: (971) 673-2713

Rule Caption: Removes requirement to examine the patient in person prior to practicing medicine across state lines.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.135, 677.137, 677.139 & 677.141

Proposed Amendments: 847-025-0000

Last Date for Comment: 8-28-08

Summary: Proposed rule removes requirement to examine the patient in person prior to practicing medicine across state lines.

Rules Coordinator: Diana M. Dolstra

Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

Telephone: (971) 673-2713

Rule Caption: Updates license renewal and reactivation rules; structure of PA Committee per Senate Bill 531 (2007).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.512 & 677.540

Proposed Amendments: 847-050-0042, 847-050-0043, 847-050-0063

Last Date for Comment: 8-28-08

Summary: Proposed rule amendments ensure license renewal and reactivation requirements for physician assistants are consistent with those of other licensees of the Board. Rule amendments also bring rule language into conformity with ORS 677.540, which was amended as a result of Senate Bill 531 (2007).

Rules Coordinator: Diana M. Dolstra

Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

Telephone: (971) 673-2713

Rule Caption: Applicants who graduated from podiatric medicine school after 1-1-2001 must pass examination Part III.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.825 & 677.830

Proposed Amendments: 847-080-0010, 847-080-0018

Last Date for Comment: 8-28-08

Summary: The proposed rule change makes the podiatry rules consistent in specifying that applicants who graduated from a school or college of podiatric medicine on or after 1-1-2001 must meet requirements regarding passage of Part III of the National Board of Podiatric Medical Examiners (NBPME).

Rules Coordinator: Diana M. Dolstra

Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

Telephone: (971) 673-2713

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Change timing and standards of ETOB review by the PERS Board.

Date:
8-26-08

Time:
2 p.m.

Location:
PERS Headquarter, Boardroom
11410 SW 68th Pkwy
Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.750

Stats. Implemented: ORS 237.620, 237.635 & 237.637

Proposed Amendments: 459-030-0011, 459-030-0025, 459-030-0030

Last Date for Comment: 9-5-08

Summary: Rulemaking commenced to implement HB 2280 (2007 Session), which eliminated the requirement that the PERS Board conduct an ETOB study every two years. This bill also set the comparative benchmark for the ETOB study to the PERS benefits that were in effect at the time the police officer or firefighter was hired. Lastly, the bill eliminated the requirement that those employers failing to meet the ETOB standard must join PERS, but, rather, requires the employer to provide comparable benefits to police officers and firefighters.

The modifications to these rules change the timing of and the standard by which the PERS Board will review the non-PERS sponsored benefit plans of those police officer and firefighters employed by public employers to ensure that they are equal to or better than (ETOB) pension benefits offered by PERS. These changes eliminate the requirement that the Board schedule an ETOB review every two years and replace it with a new method by which the study will be engaged by the Board. The rules are also being modified to reflect a new ETOB standard that sets the comparative benchmark for the study to the PERS benefits that were in effect at the time the employee was hired.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Oregon State Marine Board Chapter 250

Rule Caption: Amend rules to establish no-wake and congestion zone designations on the Willamette River.

Date:
9-9-08

Time:
7 p.m.

Location:
Clackamas Comm. College
Wilsonville Training Center
Rm. 111/112
29353 Town Center Loop E.
Wilsonville, OR 97070

Hearing Officer: Mr. Randy Henry

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Proposed Amendments: 250-010-0010, 250-020-0032, 250-020-0385

Last Date for Comment: 9-9-08

Summary: OSMB is proposing to amend the rules governing the Willamette River from RM 31.5 at the upper end of Willow Island to RM 48.5 at the Hwy 219 Bridge by establishing no-wake and congestion zone designations. In support of the proposed rules, OSMB will also recommend the adoption of new limitations and definitions including: restrictions on wake-enhancing devices, towed devices and power-turns, minimum separations between boats and skiers; operational distances from docks or moorages. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: June LeTarte

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

Telephone: (503) 378-2617

NOTICES OF PROPOSED RULEMAKING

Oregon State Treasury Chapter 170

Rule Caption: Allocation of Private Activity Bond Limit.

Stat. Auth.: ORS 286.615

Stats. Implemented: ORS 286.615

Proposed Amendments: 170-071-0005

Last Date for Comment: 8-25-08

Summary: The rule changes (1) clarify the Private Activity Bond Committee's policy of allowing carry forward allocations for specific projects/purposes or for a qualifying class of projects to be further allocated by the requestor, (2) revise the time period for acceptance of cap allocation requests to allow for more efficient timing of meetings of the Committee, and (3) bring the administrative rules for PAB allocations into compliance with HB 3265 which became effective on January 1, 2008.

Rules Coordinator: Sally Furze

Address: Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 378-4990

Oregon Student Assistance Commission Chapter 575

Rule Caption: The Oregon Tax Credit Program for Eligible Employers with Employee and/or Employee Dependent Scholarship Programs.

Date:
9-26-08

Time:
9:30 a.m.

Location:
Student Assistance Commission
1500 Valley River Dr.,
Suite 100
Eugene, OR 97401

Hearing Officer: Bridget Burns

Stat. Auth.: ORS 183 & 348

Stats. Implemented: ORS 315.237 & HB 2527, 2008 Legislative Assembly

Proposed Amendments: 575-063-0005, 575-063-0010, 575-063-0020, 575-063-0030

Proposed Repeals: 575-063-0040, 575-063-0050, 575-063-0060, 575-063-0080, 575-063-0090

Last Date for Comment: 9-26-08, Close of Hearing

Summary: OAR 575-063 defines and provides procedures for the Oregon Employer Tax Credit Program for employers with employee and/or employee dependent scholarship programs certified by the Oregon Student Assistance Commission.

Rules Coordinator: Susanne D. Ney

Address: Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

Telephone: (541) 687-7394

Oregon University System, Eastern Oregon University Chapter 579

Rule Caption: Revisions to the Eastern Oregon University Student Records Policy.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.060 & 351.088

Proposed Amendments: 579-045-0005

Last Date for Comment: 8-22-08

Summary: The proposed amendments to the rules of the Student Records Policy are to accommodate institutional changes and to establish boundaries regarding student privacy.

Rules Coordinator: Lara Moore

Address: Oregon University System, Eastern Oregon University, One University Blvd., La Grande, OR 97850

Telephone: (541) 962-3368

Oregon Watershed Enhancement Board Chapter 695

Rule Caption: Amends OWEB criteria for grants that enhance habitat and employ displaced commercial and sport fishers.

Date:
8-19-08

Time:
2 p.m.

Location:
State Lands Bldg.,
Mill Creek Rm.
775 Summer St. NE
Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 541.396

Other Auth.: Governor's Executive Order No. 08-10

Stats. Implemented: ORS 541.396 - 641.401

Proposed Amendments: Rules in 695-007

Last Date for Comment: 8-22-08, 5 p.m.

Summary: The proposed rules would make permanent the amendments to division 7 of OAR 695 that allow the Oregon Watershed Enhancement Board to apply award preferences for restoration inventory and data collection, and project development grants that support priority salmon habitat enhancement and that are able to create work opportunities for fishers displaced by the 2008 limitations on ocean commercial and sport salmon fishing. These rules are in response to the Governor's Executive Order No. 08-10 declaring a state of emergency.

Public comment will be accepted on the proposed rules from August 1, 2008 through 5 p.m. on Friday, August 22, 2008. Copies of the rules will be available by August 1, 2008 on OWEB's website (www.oregon.gov/OWEB).

Rules Coordinator: Melissa Leoni

Address: Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301

Telephone: (503) 986-0179

Parks and Recreation Department Chapter 736

Rule Caption: Historic Preservation Officer Procedural Rules — Housekeeping clarification regarding required notice of proposed rulemaking.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(4)

Proposed Amendments: 736-050-0002

Last Date for Comment: 8-15-08

Summary: Housekeeping clarification regarding required notice or proposed rulemaking to include notice to Legislators and to the Capitol Press Room.

Rules Coordinator: Joyce Merritt

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

Telephone: (503) 986-0756

Racing Commission Chapter 462

Rule Caption: Amendments for procedural, horse racing, account wagering and multi-jurisdictional simulcasting and interactive totalizator hub rules.

Date:
8-21-08

Time:
1:30 p.m.

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

Hearing Officer: Charles Williamson, Commissioner

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.020, 462.270, 462.406, 462.415 & 462.450

Proposed Adoptions: 462-001-0006, 462-001-0008, 462-120-0055, 462-140-0025, 462-140-0125

Proposed Amendments: 462-001-0000, 462-001-0005, 462-110-0010, 462-110-0020, 462-120-0040, 462-120-0050, 462-120-0060, 462-120-0070, 462-120-0090, 462-120-0100, 462-120-0110, 462-120-0120, 462-130-0010, 462-130-0020, 462-130-0040, 462-130-0050, 462-130-0060, 462-140-0010, 462-140-0030, 462-140-0040,

NOTICES OF PROPOSED RULEMAKING

462-140-0060, 462-140-0070, 462-140-0100, 462-140-0130, 462-140-0140, 462-140-0150, 462-140-0170, 462-140-0180, 462-140-0190, 462-140-0230, 462-140-0290, 462-140-0310, 462-140-0320, 462-140-0340, 462-140-0360, 462-140-0370, 462-150-0010, 462-150-0030, 462-150-0040, 462-150-0050, 462-150-0060, 462-150-0070, 462-150-0080, 462-150-0090, 462-150-0100, 462-150-0110, 462-160-0110, 462-160-0120, 462-160-0130, 462-160-0140, 462-210-0030, 462-220-0030, 462-220-0060

Proposed Repeals: 462-120-0010, 462-140-0110, 462-140-0120

Last Date for Comment: 8-21-08

Summary: The cited rules are proposed amendments to (1) procedural rules; (2) horse racing rules which include licensing procedures, prohibited conduct and hearing procedures, duties, racing requirements and procedures, and medication and miscellaneous provisions; and (3) rules regarding establishment of an account, license for a hub operation and clarification on where a wager is considered to have been made.

Rules Coordinator: Carol N. Morgan

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

Telephone: (971) 673-0208

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Water Resources Department Chapter 690

Rule Caption: Amend the Umatilla Basin Program to allow aquifer recharge in the Walla Walla River Subbasin.

Date:

9-2-08

Time:

2-3:30 p.m.

Location:

Milton-Freewater Library
8 SW Eighth Ave
Milton-Freewater, OR

Hearing Officer: Charles Barlow

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.220 - 536.241

Proposed Amendments: 690-507-0020, 690-507-0030

Last Date for Comment: 10-2-08, 5 p.m.

Summary: The Water Resources Department is proposing to amend rules related to the Walla Walla River Subbasin of the Umatilla Basin program (OAR chapter 690, division 507) to allow aquifer recharge to restore declining ground water levels or declining flow at springs or ground water seeps to the Walla Walla River and tributaries, and supplement existing ground water uses. This rulemaking is in response to requests from local groups that are pursuing aquifer recharge.

Rules Coordinator: Ruben Ochoa

Address: Water Resources Department, 725 Summer St. NE, Salem, OR 97301

Telephone: (503) 986-0874

ADMINISTRATIVE RULES

CORRECTION

The following Administrative Orders were published in the July 1, 2008 Oregon Bulletin with erroneous information in their “Rule Caption” and “Subject” lines. The information was inadvertently switched so that one Administrative Order contained the Caption and Subject for the other, and vice versa. The rule numbers and rule language for the Orders were published accurately. The corrected Administrative Order information appears below.

Oregon Liquor Control Commission Chapter 845

Rule Caption: Adopt, amend and repeal rules creating new Direct Shipper Permit and Wine Self-Distribution Permit.

Adm. Order No.: OLCC 8-2008

Filed with Sec. of State: 6-12-2008

Certified to be Effective: 6-29-08

Notice Publication Date: 3-1-2008

Rules Adopted: 845-005-0416, 845-005-0417, 845-005-0425, 845-005-0426, 845-006-0391, 845-006-0392, 845-006-0400, 845-006-0401, 845-015-0141

Rules Amended: 845-005-0420, 845-005-0424, 845-006-0396

Rules Repealed: 845-005-0422, 845-005-0423, 845-006-0395, 845-006-0398

Subject: These rules need adoption, amendment and repeal in order to comply with statutory changes regarding the creation of the new Direct Shipper Permit and Wine Self-Distribution Permit. Creation of these two new permits by the legislature made it necessary to amend our current rules which previously covered the delivery of malt beverages, wine, and cider all in the same rule. We also amended the same-day delivery requirements to create greater flexibility in meeting the needs of the growing home-delivery e-commerce business while still addressing public safety with safeguards against sales to minors and visibly intoxicated persons. The rule amendments need to be made to comply with the 2007 legislature’s HB 2171 and HB 2677, as well as the 2008 special session’s HB 3636.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

Rule Caption: Amend seven rules adding Domestic Partner language where there is currently spouse language.

Adm. Order No.: OLCC 9-2008

Filed with Sec. of State: 6-12-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 4-1-2008

Rules Amended: 845-004-0001, 845-005-0311, 845-006-0335, 845-008-0045, 845-015-0118, 845-015-0148, 845-015-0190

Subject: This package of rules, spanning a range of rule Divisions, includes seven Commission rules which currently describe certain privileges and/or requirements related to spouses. The 2007 legislature passed House Bill (HB) 2007, effective January 1, 2008. House Bill 2007 created the Oregon Family Fairness Act, which grants to Domestic Partners (upper case) all rights and responsibilities that are currently granted to spouses in law (including administrative rule). “Domestic Partner” means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act. Six of the rules in this package add Domestic Partner language where spouses are specifically mentioned in current rule language. The seventh rule, OAR 845-008-0045 Service to Guests by Full On-Premises Sales Licensees regulates the sale and service of alcoholic beverages at private clubs. Because it is up to the private clubs to define their auxiliary members, we are removing the language regarding spouses, rather than adding Domestic Partner language. We need to amend these rules to bring them into compliance with the new statutory language regarding Domestic Partners.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

Board of Clinical Social Workers Chapter 877

Rule Caption: Amends rules for clinical social workers; adds requirement for criminal records check; increases some fees.

Adm. Order No.: BCSW 1-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 877-022-0005, 877-025-0001, 877-025-0006, 877-025-0011, 877-025-0016, 877-025-0021

Rules Amended: 877-020-0000, 877-020-0005, 877-020-0008, 877-020-0009, 877-020-0010, 877-020-0012, 877-020-0015, 877-020-0016, 877-020-0020, 877-020-0030, 877-020-0031, 877-020-0036, 877-020-0046, 877-020-0055, 877-030-0040

Rules Repealed: 877-020-0013, 877-025-0000, 877-025-0005

Subject: These changes accomplish the following: (1) Clarify process for certification and licensing; (2) Change the period for passing test for licensure; (3) Establish the same fee for issue of initial and renewal of certificate; (4) Establish the same fee for issue of initial and renewal of license; (5) Increase License renewal from \$90 to \$130; (6) Increase application fee from \$100 to \$150; (7) Repeals the designations of “formal” and “informal” continuing education; (8) Allows the Board to require national FBI fingerprint background check for all applicants and other specific categories; (9) Reduces the lead-time needed for submission of non-credentialed continuing education; and (10) Requires licensees to timely self-report in-patient psychiatric hospitalization or psychiatric day treatment.

Rules Coordinator: Jon F. Langenwalter—(503) 378-5735

877-020-0000

Definitions

An “agency” is an organization that, through its employees, engages in clinical social work (defined in ORS 675.510(2)) and in which:

- (1) Cases are assigned through a central process;
- (2) Billing is centralized and done in the organization’s name;
- (3) The organization collects all fees including deductibles and co-payments;
- (4) The organization controls client records and is responsible for their proper storage and destruction;
- (5) The organization controls office space by renting, owning, or leasing it;
- (6) The organization displays its name on the premises so as to be clearly visible to clients;
- (7) The name of the organization is on all forms given to the client;
- (8) The organization maintains the responsibilities for hiring and firing of staff;
- (9) The organization pays the staff for clinical services;
- (10) Supervision of clinical social work associates is provided on a regular basis;
- (11) Evaluation of the competence of social workers who provide social work services at the organization is provided on a regular basis; and
- (12) Policies and procedures of the organization are available in written form for the staff and clients.

Stat. Auth.: ORS 675.510 – 675.600 & 675.990

Stats. Implemented: ORS 675.590

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0005

Rules Applicable to Certification and Licensing

This division of rules contains:

- (1) The requirements to obtain and renew a certificate of social work associate.
 - (2) The requirements to obtain and renew a clinical social work license.
 - (3) The rules regarding the surrender and reissuance of a license.
 - (4) The rules regarding the surrender and reissuance of a certificate.
 - (5) The process of de-activating and re-activating a license.
- Stat. Auth.: ORS 675.510 – 675.600
- Stats. Implemented: ORS 675.537
- Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

ADMINISTRATIVE RULES

877-020-0008

Licensing Requirements

To be eligible for an initial license, except when the provisions of OAR 877-020-0016 apply, a person must meet the requirements in sections (1) through (5) of this rule:

(1) The person must complete the requirements in OAR 877-020-0009 to receive a certificate of social work associate and must hold a current certificate in good standing.

(2) The person must be fit to practice social work in Oregon. The board uses the following standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of "good moral character" may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice clinical social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person's history includes conduct that may call into question the person's fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person's relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(3) The person must not be the subject of a pending investigation or disciplinary action by a regulatory board.

(4) The person must complete the requirements of an approved plan of practice and supervision in accordance with the rules in this division of rules.

(5) The person must meet the following requirements for taking and passing written examinations:

(a) Within two years following the board's authorization to take the exams, the person must pass both the examination administered by the board on the subjects listed in section (6)(a) of this rule and a national examination for clinical social workers administered by an organization approved by the board on the subjects listed in section (6)(b) of this rule.

(b) An applicant who fails either portion of the examination a second time must obtain special permission from the board to take any subsequent examination. The board may approve the request if the last report required by OAR 877-020-0012(2)(e)(A) has been received by the board and shows the associate is meeting the requirements of the plan and that the associate otherwise meets the requirements for licensure.

(c) To pass the two required examinations, the candidate must score not less than the following:

(A) For the examination on the Oregon statutes and rules – a score of 90 percent.

(B) For the national examination — a score of 70.

(6) The subjects tested on the exam are:

(a) For the portion of the examination on the Oregon statutes and rules:

(A) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing the practice standards and responsibilities of a licensed clinical social worker.

(B) Oregon Revised Statutes relating to mental health practice that may be relevant to clinical social work practice.

(b) For the national portion of the examination:

(A) Human Development and Behavior.

(B) Issues of Diversity.

(C) Diagnosis and Assessment.

(D) Psychotherapy and Clinical Practice.

(E) Communication.

(F) The Therapeutic Relationship.

(G) Professional Values and Ethics.

(H) Clinical Supervision, Consultation, and Staff Development.

(I) Practice Evaluation and the Utilization of Research.

(J) Service Delivery.

(K) Clinical Practice and management in the Organizational Setting.

Stat. Auth.: ORS 675.510 – 675.600 & 675.990

Stats. Implemented: ORS 675.535

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 3-1990(Temp), f. & cert. ef. 10-15-90; BCSW 1-1991, f. & cert. ef. 3-15-91; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0009

Requirements for Certificate of Clinical Social Work Associate

To be eligible for an initial certificate of social work associate, a person must:

(1) Submit a complete and accurate application on a form provided by the board.

(2) Hold a master's degree in social work from a college or university accredited by a credentialing body approved by the board.

(3) Submit to the board for approval and, following approval, satisfactorily work toward completing an approved plan of practice and supervision that:

(a) Shows that the person will meet the requirements in OAR 877-020-0010(3) while working in an agency that:

(A) Provides the associate with sufficient support to progress toward licensure;

(B) Screens patients who are served by the agency and by the associate; and

(C) Either:

(i) Is licensed by the Oregon Department of Human Services; or

(ii) If not required to be licensed by the Oregon Department of Human Services, is in compliance with the requirements to conduct business in Oregon.

(b) Requires a minimum of 3,500 practice hours of which at least 2,000 hours must involve direct contact with a client of the agency.

(c) Provides for supervision of the associate that meets the requirements of OAR 877-020-0012.

(d) Provides that the associate meet with the plan supervisor for a minimum of one hour not fewer than two times a month. This requirement of the supervision is not met through a training or administrative activity. The associate may meet alone with the supervisor (individual supervision) or may meet with the supervisor and as many as four other mental health professionals (group supervision).

Stat. Auth.: ORS 675.510 – 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0010

Plan of Practice and Supervision

(1) After a person submits an application described in OAR 877-020-0009, the board will inform the person whether the application, including the plan of practice and supervision, is approved.

(2) After an application has been approved, an associate may request a change to a plan of practice and supervision by submitting a request to the board that provides a justification for the change and ensures that the plan, as modified, will meet the requirements of this division of rules.

(3) For the associate to satisfactorily complete a plan of practice and supervision, the following requirements must be met while the associate is working under an approved plan of practice and supervision:

(a) The contact with clients described in OAR 877-020-0009(3)(b) must be direct contact during which the associate practices social work, which is defined in ORS 675.510(2).

(b) The associate must meet with a supervisor identified in the plan, as required in OAR 877-020-0009(3)(d):

(A) For a total of 100 hours over a period of not less than 24 consecutive months nor more than 60 consecutive months, of which a minimum of 50 hours must be individual supervision. The associate must meet at least twice each month with a plan supervisor for a minimum of one hour. If there is a second supervisor for group supervision, the requirement in this paragraph is met by a single one-hour meeting with each supervisor.

(B) At least once each month with a plan supervisor for a minimum of one hour after the associate is authorized to take the examination identified in OAR 877-020-0008(5)(b).

(c) All supervision must be accomplished directly, in a professional setting.

(d) The associate must submit to the board, on a form provided by the board, each evaluation by the supervisor (or supervisors in the event two are authorized) required by OAR 877-020-0012(2)(e)(A) of the progress by the associate toward completion of the plan.

(e) After April 1, 2009, the associate must pass the national examination required by OAR 877-020-0008(4) by achieving a score of not less than 70.

(f) The associate must work with each supervisor identified in an approved plan for not less than six months unless a change in supervision is required by the agency in which the associate is working and the board approves the change.

Stat. Auth.: ORS 675.510 – 675.600, 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0012

Requirements of Supervision

(1) Qualifications of supervisor.

ADMINISTRATIVE RULES

(a) The supervisor of the associate must be a licensed clinical social worker, approved by the board at the time the applicant submits the plan of practice and supervision for approval, unless the associate works more than 50 miles from the nearest licensed clinical social worker able to serve as supervisor of the associate. In this event, upon request of the associate, the board may authorize a supervisor who is one of the following:

(A) A clinical psychologist licensed in Oregon, a psychiatrist licensed in Oregon, or a person similarly qualified.

(B) A person who meets the following requirements for licensure but has not been licensed by the board:

(i) The educational requirement in OAR 877-020-0009(2).

(ii) Field experience requirement described in OAR 877-020-0009(3).

(b) The supervisor of the associate:

(A) Must have completed two years of licensed practice.

(B) Must have completed and reported to the board at least six hours of continuing education hours described in OAR 877-025-0006(1) or (2) in techniques of supervision within five years prior to commencing the supervision of an associate.

(2) Requirements of the supervision.

(a) The associate may have one supervisor for individual supervision and a different supervisor for group supervision.

(b) The relationship between the supervisor and the associate must be of a professional nature, and the ethical standards for social workers, including standards contained in this division of rules, are applicable to each of them.

(c) The supervisor must have the authority to direct the caseload and treatment plans of the associate.

(d) In order that the goals of the supervision are reached:

(A) The supervisor and associate are expected to discuss cases with each other based on case notes, charts, records, and audio or visual tapes of clients, if available.

(B) The associate must present to the supervisor assessments, diagnoses, and treatment plans of clients seen by the associate.

(C) The treatment plans presented by the associate must be appropriate, and the supervisor must focus on the therapeutic skill of the associate in promoting change in the client.

(D) The supervisor must have the authority to determine the appropriateness of the associate's client population to the associate's level of expertise.

(e) A licensed clinical social worker or other person authorized by the board who agrees to supervise an associate must:

(A) Submit to the board at intervals not to exceed six months an evaluation of the associate's progress toward completion of the plan, on a form provided by the board.

(B) Report to the board in writing immediately in the event the associate is not complying with the plan of practice and supervision.

(C) Report to the board in writing immediately in the event the relationship between the supervisor and the associate ends earlier than the date provided for in the Plan.

(D) Make other reports as required by the board.

Stat. Auth.: ORS 675.510 - 675.600, 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0015

Required Documentation

The board will accept as evidence that an applicant meets the degree requirement in OAR 877-020-0009(2) only:

(1) A certified transcript from the institution awarding the degree; or

(2) A copy of a transcript from the awarding institution or other written verification provided by the social work registry maintained by the Association of Social Work Boards.

Stat. Auth.: ORS 675.510 - 675.600, 675.990 & 675.990

Stats. Implemented: ORS 675.535

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0016

Licensing of People Qualified in Another Jurisdiction

A person licensed, certified, or registered as a clinical social worker in another jurisdiction is eligible to be licensed in Oregon if:

(1) The person meets the education requirement in OAR 877-020-0009(2);

(2) The person is fit to practice social work in Oregon and is not subject of an investigation or disciplinary action by a licensing board;

(3) As a condition of licensure, certification, or registration in the other jurisdiction, the person was required to meet requirements for super-

vised practice substantially equivalent to those set out in this division of rules; and

(4) The person successfully completes the exam on Oregon law and the national exam for clinical social worker described in and subject to the limitation in OAR 877-020-0008(4).

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.535(4)

Hist.: BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1998, f. & cert. ef. 9-14-98; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0020

Fees for Certification and Licensure

Following are the fees due, without pro ration, in connection with obtaining and retaining a certificate or license under this division of rules:

(1) With an application for a certificate — \$150

(2) With an application for a license — \$150

(3) For the initial certificate — \$60

(4) For the renewal of a certificate — \$60

(5) For the initial license — \$130

(6) For the renewal of a license — \$130

(7) For a renewal of an inactive license — \$48

(8) For a request for renewal of a certificate or license received by the board after the certificate or license has expired — \$50 in addition to the fee required by this rule for renewal.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.571

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1988, f. & cert. ef. 11-15-88; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 2-1999(Temp), f. & cert. ef. 7-1-99 thru 11-1-99; BCSW 3-1999, f. & cert. ef. 10-13-99; BCSW 1-2003(Temp), f. 5-15-03, cert. ef. 7-1-03 thru 12-28-03; BCSW 2-2003, f. 11-21-03, cert. ef. 12-1-03; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0030

Renewals of Certificates and Licenses

(1) The holder of a certificate or license may renew it by timely submitting the following to the board:

(a) A completed application for renewal.

(b) The fee required by OAR 877-020-0020.

(2) The board will act on an application only if, not later than 30 days after the person's birth month, the complete application and required fee are received by the board.

(3) The board will issue a certificate upon renewal only if the last report required by OAR 877-020-0012(2)(e)(A) has been received by the board and demonstrates that satisfactory progress is being made toward completion of the associate's current board-approved plan of practice and supervision.

(4) The application for renewal of a license must show that the licensee:

(a) Has been actively engaged in clinical social work during the effective period of the current license; and

(b) Has met the requirement for continuing education in division 25 of this chapter of rules.

(5) If the application for renewal of a certificate or license fails to meet the requirements of this rule, the application is incomplete and will not be acted upon by the board.

Stat. Auth.: ORS 675.510 - 675.600, 675.990

Stats. Implemented: ORS 675.560

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0031

Surrender of License or Certificate

(1) A licensed clinical social worker or clinical social work associate may offer to surrender his or her license or certificate at any time.

(2) No complaint pending. If no complaint is pending at the time an offer to surrender is received, the board may accept the surrender and void the license or certificate.

(3) Complaint pending:

(a) A licensed clinical social worker or clinical social work associate may offer to surrender his or her license or certificate after a complaint has been filed with the board or after the board has initiated disciplinary action. Such an offer to surrender may be accepted by the board, and the board may make acceptance contingent upon terms of a final order in a contested case.

(b) If the surrender of a license or certificate is required by a final order in a contested case, the final order may specify whether and under what conditions the holder of the license or certificate may apply for a new license or certificate and may attach conditions that restrict the use of the license or certificate.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

ADMINISTRATIVE RULES

Stats. Implemented: ORS 675.595

Hist.: BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0036

Reissuance of Certificate or License

(1) Following the voluntary surrender of a certificate or license under OAR 877-020-0031(2), the board may reissue it if:

(a) The applicant submits a letter to the board explaining the reasons for returning to practice;

(b) The board approves the applicant's proposal to demonstrate competence to hold the certificate or license. The plan may involve participation in continuing education programs or clinical supervision; and

(c) The applicant takes and passes the examinations described in OAR 877-020-0008.

(2) If the board accepts a voluntary surrender of a certificate or license after a complaint was filed with the board against the holder while the complaint is pending, the board may reissue the certificate or license under conditions that take into account the circumstances of the surrender and may attach conditions to the certificate or license, including conditions contained in a final order if one was served in connection with the surrender. The board will not reinstate a license or certificate that has been surrendered. A person who surrenders a certificate or license may apply for a new license three years after the date the surrender was accepted by the board.

(3) If the board revokes or refuses to renew a certificate or license, other than for the holder's failure to timely apply for renewal, the former holder may request reissuance at the expiration of three years from the time it was revoked. The board may reissue the license upon finding the applicant is fit to practice social work and otherwise meets the requirements for licensure and may attach conditions to the certificate or license, including conditions contained in a final order if one was served in connection with the revocation.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0046

Inactive Status for Licensees

(1) Upon written request and certification by a licensed clinical social worker who plans not to practice clinical social work in Oregon for an extended period of time, the board may place a license in inactive status.

(2) A licensed clinical social worker whose license is in inactive status is subject to the requirements imposed on licensed clinical social workers except for the requirement to submit annual reports of continuing education.

(3) At the time a request to be placed on inactive status is submitted, a licensed clinical social worker must be current on the fees required by OAR 877-020-0020. At the time of the request, and at the time of each renewal of the license while it is inactive, the licensee must certify on a form provided by the board that the licensee will not use the title of licensed clinical social worker while the license is inactive.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.560

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-020-0055

Return to Active Status for Licensees

(1) The holder of an inactive license may submit a written request to the board to return to active status.

(2) As a condition of approving the request, the board may require the applicant to complete continuing education in specified topics. Normally, the board will not impose a requirement to complete continuing education if the period of inactive status is less than two years.

(3) As a condition of approving the request, the board may require the applicant to work under a plan of practice and supervision, or to meet other requirements that demonstrate the candidate's fitness before re-activating the license. The requirement to work under a plan of practice and supervision is based on the candidate's circumstances, including the candidate's practice experience and the duration of the inactive period. Normally, the board will not impose a requirement to work under a plan of practice and supervision if the period of inactive status is less than five years.

(4) The holder of an inactive license must pass the examination on Oregon statutes and rules described in OAR 877-020-0008(6) if the request to return to active status is received by the board more than 36 months after the board notified the licensee that the license was inactive.

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-022-0005

Requirements Pertaining to Criminal Records Check

(1) A person who wishes to be certified or licensed under this chapter must be fit to practice clinical social work as defined in OAR 877-020-0008. As part of a fitness determination, the board considers past conduct, including conduct that resulted in a criminal conviction, that is related to a person's honesty, or is related to the practice of social work. The purpose of this rule is to implement ORS 181.534(9) and provide for criminal records checks by the board. The results of criminal records checks are used by the board to determine fitness to practice clinical social work.

(2) The following persons must, upon request of the board, take the steps necessary to complete a request for a state or nationwide criminal records check under ORS 181.534:

(a) A person whose application form and fees for a certificate of clinical social work associate is received by the board on or after July 1, 2008.

(b) A person whose application form and fees for a license as a licensed clinical social worker is received by the board on or after July 1, 2008.

(c) The holder of a certificate of clinical social work associate or a license as a licensed clinical social worker who is the subject of inquiry by the board.

(3) To complete the request for criminal records, the board may require the person to:

(a) Provide information necessary to obtain the criminal records check.

(b) Provide fingerprints on forms made available by the board.

(c) Pay the actual cost to the board of conducting the criminal records check.

(4) In reviewing the information obtained from a criminal records check, the board may consider:

(a) Any criminal conviction and related information a court could consider in imposing a punishment, in compliance with ORS 670.280

(b) Any arrests and records related to any crime that may be indicative of a person's inability to perform as a licensee or certificate holder with care and safety to the public.

(5) Fitness determination. In deciding whether an individual is fit to hold a license or certificate, the board may consider:

(a) A criminal records background check.

(b) F statements made by the individual regarding criminal history of the individual.

(c) A refusal to submit or consent to a criminal records check including fingerprint identification.

(d) Other pertinent information obtained as part of an investigation.

(6) The board may make a fitness determination conditional upon the individual's acceptance of probation, conditions, limitations, or other restrictions upon licensure or certification. In the process followed by the board for making a fitness determination, the following apply:

(a) A person identified in section (2) of this rule who makes a false statement regarding the person's criminal history is unfit and subject to denial of an application for license or certificate or to disciplinary action authorized in ORS 675.510 to 675.990, including denial of an application for licensure or certification.

(b) If a person identified in section (2) of this rule refuses to consent to a criminal records check or refuses to be fingerprinted, the board will revoke the person's license or certificate or, in the case of an applicant for a certificate or license, will consider the application incomplete.

(c) For all fitness determinations not covered by subsection (a) or (b) of this section, the board will consider, at a minimum, the following:

(A) The nature of the crime of which the person has been convicted or indicted;

(B) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(C) The relevancy, if any, of the crime or the false statement to the specific requirements of the person's present or proposed position as a holder of a certificate or license; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position as a holder of a certificate or license. Intervening circumstances include but are not limited to the following factors with respect to a crime of which the person has been convicted:

(i) The passage of time since the commission of the crime;

(ii) The age of the subject individual at the time of the crime;

(iii) The likelihood of a repetition of an offense or of the commission of another crime;

(iv) The subsequent commission of another relevant crime;

(v) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(vi) A recommendation of an employer who employed the person after the conviction.

(E) Other relevant information.

(7) Protection of information:

ADMINISTRATIVE RULES

(a) Information obtained by the board in carrying out its responsibilities under this rule is considered part of the investigation of an applicant or licensee and is confidential under ORS 676.175.

(b) Criminal offender information obtained from the Law Enforcement Data System must be handled in accordance with the applicable requirements in ORS chapter 181 and OAR chapter 257, division 15.

(8) The board will permit the person for whom a fingerprint-based criminal records check is conducted to inspect the individual's own state and national criminal offender records in the possession of the board and, if requested by the applicant, provide the individual with a copy of those records.

(9) Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or Federal Bureau of Investigation must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or the reporting agency and not to the board.

(10) A person against whom disciplinary action is taken by the board on the basis of information obtained as the result of a criminal records check conducted pursuant to this rule is entitled to notice and hearing in accordance with the provisions for contested cases in ORS chapter 183.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-025-0001

General

A licensed clinical social worker must complete and report continuing education according to the requirements in this division of rules.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-025-0006

Types of Continuing Education

To meet the requirements of this division of rules, continuing education must be one of the following:

(1) A conference, seminar, or workshop that:

(a) Addresses subjects related to the licensee's work practice;

(b) Is attended by the licensee in person, on-line or through a web cast; and

(c) Is provided or approved by a credentialing body recognized and approved by the board. The board recognizes and approves a credentialing body based on the following practices of the body:

(A) The body uses an established process for determining which training to provide or approve.

(B) The body uses an established process for determining who will present the training.

(C) The body provides, with respect to the training, written materials that demonstrate the relevance of the training to the field of clinical social work.

(D) The body establishes an appropriate number of continuing education credits for the training.

(E) The body verifies the credentials of the presenters of the training.

(F) The body uses an established system for the evaluation of presenters.

(G) The body provides a certificate of completion to those who attend, based on actual attendance.

(2) A conference, seminar, or workshop that:

(a) Meets the following requirements:

(A) Is related to the field of clinical social work;

(B) Addresses subjects related to the licensee's work practice;

(C) Is not provided or approved by a credentialing body recognized and approved by the board; and

(D) Is attended by the licensee in person, on-line, or through a web cast.

(b) Is approved by the board based on the licensee's written application that:

(A) Contains the following information:

(i) Name or description of the event

(ii) Date of the event

(iii) Brief description of the training sufficient to show that the training meets the requirements of section (2)(a) of this rule.

(iv) Name and credentials of each presenter

(v) Number of continuing education units requested

(vi) Copy of the certificate of completion

(B) Is received by the board not later than the time of the submission of the report required by OAR 877-025-0021 and not later than 45 days prior to the last day of the birth month of the licensee.

(3) A course related to social work at an accredited college or university.

(4) A training video or audio recording approved by a credentialing body recognized and approved by the board. Successful completion is demonstrated by award to the licensee by the credentialing body.

(5) Participation in a study group, subject to the following limitations:

(a) The group must contain a minimum of five and a maximum of 10 licensed mental health professionals who meet for a minimum of an hour on a scheduled basis to discuss topics directly related to the field of clinical social work.

(b) The focus of the group's meeting must be a presentation or discussion of a book or article published by a professional body.

(c) The topics of the group's discussion must be directly related to established mental health care and relevant to good practice.

(d) A maximum of two hours may be credited for a group meeting.

(e) Credit for participation in a study group must be approved in advance by the board. To apply for approval, a licensee must submit the names of the group members and discussion topics to the board.

(6) Development and presentation of a conference, workshop, or seminar that would be countable for credit under section (1) or (2) of this rule.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-025-0011

Required Hours of Continued Education

(1) Generally.

(a) A licensee is required to report continuing education for all periods during which the licensee's license is active except for the period covered by the initial license, unless a waiver is granted under section (2) of this rule. An initial license is the first license issued by the board to the licensee.

(b) Following the first renewal of a license, except when the licensee is on inactive status, the licensee must complete continuing education in each reporting period at the times described in OAR 877-025-0021. The holder of an inactive license is not required to submit the biennial report.

(c) A report covering a two-year period must contain a minimum of 40 hours of creditable continuing education. A report that covers shorter period, as may happen in the case of the first report by a new licensee or following the reactivation of a license, must contain a minimum of 20 hours of creditable continuing education for each year covered by the report.

(2) Waiver of requirement.

(a) Upon timely written request of a licensee, made as soon as the licensee is aware of the possible need for a waiver, the board may reduce the number of hours required in the event the licensee is unable, due to circumstances beyond the reasonable control of the licensee, to complete the number of hours of continued education required by this division of rules.

(b) A reduction authorized by the board would normally reflect the licensee's ability to attend training during the time not affected by the adverse circumstances leading to the request. For instance, a licensee unaffected by the adverse circumstance during the first year of a two-year reporting period would be expected to obtain 20 hours of credit.

(c) Examples of circumstances that may justify a waiver are:

(A) A circumstance beyond the reasonable control of the licensee makes it impracticable for the licensee to attend training for an extended time.

(B) The health of the licensee or of another person makes it impracticable for the licensee to attend training for an extended time.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-025-0016

Limitations on Types of Continuing Education

The number of hours creditable in a two-year reporting period is subject to the following provisions:

(1) A licensee must report a total of six or more hours of continuing education in ethics:

(a) In the first biennial report required by OAR 877-025-0021 for a two-year period that ends after January 1, 2009; and

(b) In each alternate biennial report due thereafter.

(2) No more than 10 hours of continuing education described in OAR 877-025-0006(2)(b) may be credited in a report.

(3) No more than 20 hours of continuing education described in OAR 877-025-0006(5) may be credited in a report.

(4) A licensee who reports more than 40 hours for a two-year reporting period or 20 for a one-year reporting period may carry over and report the excess hours again in the next required report. No more than 10 hours may be carried over to the next reporting period. Only hours described in OAR 877-025-0006(1), (2), or (3) may be carried over.

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(5) If the first reporting period is one year rather than two, the limits in sections (2) and (3) of this rule are pro-rated.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-025-0021

Reporting Requirements

(1) Licensees must report the completion of continuing education every two years on forms prescribed by the board. The report must be made at the time the licensee submits an application to renew the license as follows:

(a) A licensee whose license number ends with an odd number must submit the report of continuing education in odd-numbered years.

(b) A licensee whose license number ends with an even number must submit the report of continuing education in even-numbered years.

(2) The report of continuing education is part of the renewal application and must contain information sufficient to demonstrate that the licensee has met the requirements in this division of rules. A licensee who fails to meet the requirements is subject to a denial of the application for renewal unless the failure was due to circumstances beyond the reasonable control of the licensee and the licensee agrees to a plan to compensate for the deficiency.

(3) The Board conducts routine, random audits of reports of continuing education at the time of the biennial report. Because a licensee is informed of an audit at the end of the reporting period, licensees must retain certificates, program information, and other documents needed to demonstrate that the licensee met the requirements of this division of rules and must provide them to the Board upon request.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

877-030-0040

Conduct and Reporting Requirements of Clinical Social Workers and Clinical Social Work Associates

(1) Conduct: The following minimum standards of professional conduct apply to clinical social workers:

(a) Private conduct of Clinical Social Workers is a personal matter to the same extent as with any other person, except when that conduct compromises the fulfillment of professional responsibilities.

(b) Clinical Social Workers may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation.

(c) Clinical Social Workers may not misrepresent their professional qualifications, education, experience, or affiliations.

(2) Reporting Requirements:

(a) Licensed Clinical Social Workers and Clinical Social Work Associates must report to the Board as soon as possible, but not later than 30 days after:

(A) Receiving notice of any civil lawsuit, criminal indictment, or court-ordered diversion;

(B) Arrest or conviction for driving under the influence of intoxicants;

(C) In-patient psychiatric hospitalization or psychiatric day treatment; or

(D) The initiation of a regulatory action related to the Licensed Clinical Social Worker's or Clinical Social Work Associate's professional conduct.

(b) Clinical Social Workers must report child and elderly abuse as required by ORS 419B.005 to 419B.050 and 124.050 to 124.095.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Clarify rules related to licensure and registration and include language to allow digital signatures.

Adm. Order No.: BEELS 2-2008

Filed with Sec. of State: 7-9-2008

Certified to be Effective: 7-9-08

Notice Publication Date: 6-1-2008

Rules Amended: 820-010-0010, 820-010-0225, 820-010-0226, 820-010-0440, 820-010-0450, 820-010-0465, 820-010-0520, 820-010-0620, 820-015-0010

Subject: OAR 820-010-0010 — The adopted amendment includes language to allow digital signatures.

OAR 820-010-0225 — The adopted amendment clarifies the requirements for entrance to the fundamentals of engineering examination prior to graduation and the official documentation required to obtain examination results.

OAR 820-010-0226 — The adopted amendment clarifies the requirements for entrance to the fundamentals of land surveying examination prior to graduation and the official documentation required to obtain examination results.

OAR 820-010-0440 — The adopted amendment clarifies deadlines for applicants by including the postmark deadline. The adopted amendment also includes the Withdraw/Forward process that allows an applicant a single opportunity to withdraw and forward an application to the next available examination administration.

OAR 820-010-0450 — General Housekeeping. The adopted amendment revises the name of the Electrical discipline to Electrical and Computer as reflected by the name of the required examination.

OAR 820-010-0465 — The adopted amendment clarifies the documentation required to be submitted with an application for readmission to an examination.

OAR 820-010-0520 — The adopted amendment clarifies the maximum number of PDH units required to attain active status. The adopted amendment also clarifies that registrants in the suspend or revoked status may not hold out as a professional registrant.

OAR 820-010-0620 — The adopted amendment includes language to allow digital signatures and define the requirements of a digital signature.

OAR 820-015-0010 — The adopted amendment includes language to assist the Board in processing complaints with a digital signature.

Rules Coordinator: Mari Lopez — (503) 362-2666, ext. 25

820-010-0010

Definitions

The following definitions and guides have been adopted by the Board to assist registrants and the general public in their interpretation of specific portions of ORS 672.002 to 672.325.

(1) "Board" means the Oregon State Board of Examiners for Engineering and Land Surveying provided by ORS 672.240.

(2) "Practice of engineering" refers to ORS 672.005 and 672.007.

(3) "Technician work" means the time spent on work where the personal responsibility and technical knowledge required are small; that is, where the individual performance of a task, set and supervised by others, is all that is required. It shall also include all time spent in work before an applicant is 18 years old "Technician work" does not include engineering work as described in section (4), land surveying work as described in section (7) or photogrammetric work as described in section (10). Engineering "technician work" includes, but is not limited to, work as an inspector, a laboratory assistant, a design assistant, a survey technician, or a draftsman. Land Surveying "technician work" includes, but is not limited to, work as a survey technician, a draftsman, an instrument plotter, or computation work under close supervision and not requiring the exercise of judgment in survey or map design, or decisions on boundary location. Photogrammetric mapping "technician work" includes but is not limited to, work as a photogrammetric mapping technician to perform technical photogrammetric or remote sensing tasks to extract spatial data from photographic imagery, digital imagery or other remotely-sensed data under close supervision and not requiring the exercise of judgment in project design or decisions related to authoritative photogrammetric measurements.

(4) "Engineering work," is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as "technician work." Credit for engineering work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Time spent in engineering teaching subsequent to graduation shall be listed as "engineering work." Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered "engineering work."

(5) "Responsible charge," as used in ORS 672.002(9), means to have supervision and control over engineering work as defined in 672.005(1), land surveying work, and photogrammetric mapping, as evidenced by performing substantially the following:

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- (a) Establishing the manner or method by which services are rendered;
- (b) Establishing quality controls for the services rendered;
- (c) Communicating with clients;
- (d) Reviewing designs, calculations, plans, surveys or maps;
- (e) Supplying deficiencies found in or correcting errors contained in designs, calculations, plans, surveys or maps;
- (f) Making changes to documents, including but not limited to, designs, plans, plats, surveys or maps; and
- (g) With respect to land surveying, reviewing field evidence and making final decisions concerning the placement of survey monuments and surveyed lines.

(6) "Supervision and control," as used in ORS 672.002(10), means establishing the nature of, directing and guiding the preparation of, and approving the work product and accepting responsibility for the work product, as evidenced by performing the following:

(a) Spending time directly supervising the work to assure that the person working under the licensee is familiar with the significant details of the work;

(b) Providing oversight, inspection, observation and direction regarding the work being performed;

(c) Providing adequate training for persons rendering services and working on projects under the licensee;

(d) Maintaining readily accessible contact with the person providing services or performing work by direct proximity or by frequent communication about the services provided or the work performed. Communications between the licensee and persons under the licensee's supervision and control include face-to-face communications, electronic mail, and telephone communications and similar, other communications that are immediate and responsive; and

(e) Applying the licensee's seal and signature to a document.

(7) "Practice of land surveying" refers to ORS 672.005(2) and 672.007.

(8) "Land surveying work" is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as "technician work". Engineering work, not related to the practice of land surveying, is not land surveying work. Credit for land surveying work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered "land surveying work."

(9) "Practice of photogrammetric mapping" or "practice of photogrammetry" refers to ORS 672.002(7).

(10) "Photogrammetric work" is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as "technician work." Credit for photogrammetric work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Time spent teaching photogrammetric mapping after graduation is "photogrammetric work." Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered "photogrammetric work."

(11) Professional Development Hour (PDH) — A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(12) Continuing Education Unit (CEU) — Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(13) College/Unit Semester/Quarter Hour — Credit for course work in an approved program or other related college course approved in accordance with article (e) of this section.

(14) Course/Activity — Any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice.

(15) Multiple Registrant means a person who is registered as both a land surveyor and an engineer or is registered as an engineer in two or more disciplines.

(16) "Digital signature" means a type of electronic signature, as allowed by the ORS 84.001 to 84.061, that transforms a message through the use of an algorithm or series of algorithms that provide a key pair, private and public, for signer verification, document security and authentication.

(17) Acronyms:

(a) ABET — Accreditation Board for Engineering and Technology, Inc.;

(b) ACCE — American Council for Construction Education;

- (c) ASAC — Applied Science Accreditation Commission of ABET;
- (d) AACRAO — American Association of Collegiate Registrars and Admissions Officers;
- (e) CPEES — Center for Professional Engineering Education Services;
- (f) EAC — Engineering Accreditation Commission of ABET;
- (g) ECE — Education Credential Evaluators, Inc.;
- (h) EI — Engineering Intern;
- (i) ELSSES — Engineering Land Surveying Examination Services;
- (j) FE — Fundamentals of Engineering;
- (k) FLS — Fundamentals of Land Surveying;
- (l) LSI — Land Surveying Intern;
- (m) NCEES — National Council of Examiners for Engineering and Surveying;

(n) TAC — Technology Accreditation Commission of ABET.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 17, f. 4-22-74, ef. 5-11-74; EE 20, f. & ef. 12-15-77; EE 1-1987, f. & ef. 1-5-87; EE 1-1992, f. & ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 4-2000, f. & cert. ef. 8-4-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2007, f. & cert. ef. 4-5-07; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 2-2008, f. & cert. ef. 7-9-08

820-010-0225

Educational Qualifications to Take the Fundamentals of Engineering (FE) Examination for Enrollment as an Engineering Intern (EI)

Applicants for admission to examination for enrollment as an EI will be required to submit the following evidence to show eligibility to take the FE examination:

(1) Official transcripts that document the degree and date awarded, demonstrating completion of an engineering curriculum satisfactory to the Board, as described in (3) below.

(2) If taking the examination prior to graduation, a statement signed by an official from the school, university or college that all work necessary to obtain a degree in a curriculum satisfactory to the Board has been or will be completed within four months following the examination as provided in ORS 670.010. An official transcript that documents the degree and date awarded, verifying completion must be received to allow enrollment as an EI. Scores will not be released until the official transcript that documents the degree and date awarded, is received.

(3) For entrance to the FE examination, a curriculum satisfactory to the Board shall include:

(a) Graduation from an EAC of ABET accredited engineering program;

(b) Graduation from a TAC of ABET baccalaureate engineering program;

(c) Graduation from an ACCE accredited four-year baccalaureate construction engineering management program;

(d) Graduation from a graduate degree program in engineering at a college or university that has an EAC of ABET accredited undergraduate degree program in the same field as the graduate degree program, combined with completion of 21 semester/32 quarter hours of engineering related technical course work. The courses shall include at least six of the following nine subjects: Differential Equations, Physics, Statistics, Statics, Dynamics, Thermodynamics, Fluid Mechanics, Electrical Fundamentals and Strength of Materials.

(e) Graduation from TAC of ABET accredited two-year Engineering Technology program or graduation from a two-year Associate of Applied Science program in Engineering Technology that includes the following:

(A) A total of at least 64 semester/96 quarter hours;

(B) At least 32 semester/48 quarter hours in technical courses. (Skills and knowledge of appropriate methods, procedures and techniques; experience in carrying out established engineering procedures);

(C) At least 16 semester/24 quarter hours in math and science, including:

(i) 4 semester/6 quarter hours in basic science (physics, chemistry, earth and life sciences);

(ii) 8 semester/12 quarter hours in mathematics (not including courses below the level of college algebra or courses in computer programming);

(D) At least 9 semester/13 quarter hours in social science, humanities and communications; and

(E) In addition to the educational requirements set forth in paragraph (e) of subsection (3), graduates from two-year programs shall complete two or more years of engineering work before qualifying to take the FE examination for enrollment as an EI. In the alternative, graduates from two-year programs may complete additional course work consisting of 21 semester/32 quarter hours in Differential Equations, Physics, Statistics, Statics, Dynamics, Thermodynamics, Fluid Mechanics, Electrical Fundamentals and Strength of Materials.

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(f) Completion of a curriculum that the Board finds has adequately prepared the application for enrollment as an EI.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 1-1986, f. 2-4-86, ef. 2-15-86; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1996, f. & cert. ef. 10-3-96; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2008, f. & cert. ef. 7-9-08

820-010-0226

Educational Qualifications to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveying Intern (LSI)

Applicants for admission to examination for enrollment as an LSI will be required to submit the following evidence to show eligibility to take the FLS examination:

(1) Official transcripts that document the degree and date awarded, demonstrating completion of a land surveying curriculum satisfactory to the Board, as described in (3) below.

(2) If taking the examination prior to graduation, a statement signed by an official from the school, university or college that all work necessary to obtain a degree in a curriculum satisfactory to the Board has been or will be completed within four months following the examination as provided in ORS 670.010. An official transcript that documents the degree and date awarded, verifying completion must be received to allow enrollment as an LSI. Scores will not be released until the official transcript that documents the degree and date awarded, is received.

(3) For entrance to the FLS Examination, a curriculum satisfactory to the Board shall include:

(a) Graduation from an EAC of ABET accredited four-year baccalaureate land surveying program;

(b) Graduation from an ASAC of ABET accredited four-year baccalaureate land surveying program;

(c) Graduation from a TAC of ABET accredited four-year baccalaureate land surveying program;

(d) Graduation from an EAC of ABET accredited four-year baccalaureate engineering program with 11 semester/16 quarter hours of surveying instruction and surveying law.

(e) Graduation from a TAC of ABET accredited four-year baccalaureate engineering program with 11 semester/16 quarter hours of surveying instruction and surveying law.

(f) Graduation from an ACCE accredited four-year baccalaureate engineering program with 11 semester/16 quarter hours of surveying instruction and surveying law.

(g) Graduation from a graduate degree program in land surveying at a college or university that has an ABET accredited undergraduate degree program in the same field, combined with completion of 11 semester/16 quarter hours of surveying instruction.

(h) Graduation from an ASAC of ABET accredited two-year Surveying Technology program, a TAC of ABET accredited two-year Surveying Technology program, or a two-year Association of Applied Science program in Surveying Technology or Engineering Technology that includes the following:

(A) A total of at least 64 semester/96 quarter hours;

(B) At least 32 semester/48 quarter hours in technical courses, of which a minimum of 11 semester/16 quarter hours shall be in surveying instruction;

(C) At least 16 semester/24 quarter hours in subjects such as math, science, basic electricity, hydraulics, road design, construction management and estimating engineering economics with college level algebra, trigonometry and statistics;

(D) At least 9 semester/13 quarter hours in social science, humanities and communications; and

(E) In addition to the educational requirements set forth in paragraph (h) of subsection (3), graduates from two-year education programs shall complete two or more years of active practice in land surveying work before qualifying to take the FLS examination for enrollment as an LSI.

(i) Completion of a curriculum that the Board finds adequately prepared the applicant for enrollment as an LSI.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2008, f. & cert. ef. 7-9-08

820-010-0440

Times for Examinations

Examinations will be held at times and locations determined by the Board. A spring examination is usually scheduled in April and a fall examination is usually scheduled in October. Each applicant accepted for examination will be notified of the time and location of the scheduled test.

(1) Deadlines for applications:

(a) December 1 is the last day for postmark of initial applications for the April examination.

(b) June 1 is the last day for postmark of initial applications for the October examination.

(c) Applications must be postmarked or hand delivered by 5:00 p.m. on the deadline. If the deadline falls on a Saturday, Sunday, or legal Holiday, applications are accepted until 5:00 p.m. on the preceding business day.

(2) Applicants may request to withdraw an application and fee for consideration from an examination administration. An application and fee may be withdrawn and forwarded to the next available examination administration only.

(a) Request must be made in writing; and

(b) Request must be made no later than March 1 to withdraw from the spring examination and September 1 to withdraw from the fall examination; and

(c) The request can only be made once per application.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; EE 2-1993(Temp), f. & cert. ef. 2-22-93; EE 3-1993, f. & cert. ef. 6-3-93; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 3-1994(Temp), f. & cert. ef. 11-21-94; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 2-2008, f. & cert. ef. 7-9-08

820-010-0450

Branches Examined by Board

The Board will conduct examinations and issue licenses in accordance with the following:

(1) Examinations will be offered annually and successful examinees will be licensed as professional engineers especially qualified in one of the branches listed below. The applicant will be limited to the selection of examination questions pertaining to that branch:

(a) Acoustical;

(b) Agricultural;

(c) Chemical;

(d) Civil;

(e) Control Systems;

(f) Electrical and Computer;

(g) Environmental;

(h) Fire Protection;

(i) Forest;

(j) Geotechnical

(k) Industrial;

(l) Mechanical;

(m) Metallurgical;

(n) Naval Architecture/Marine;

(o) Nuclear;

(p) Structural.

(2) Persons desiring to be licensed as a professional engineer naming a branch other than one listed under section (1) of this rule as one in which the individual is especially qualified may petition the Board to amend the list. Procedures are designated in the Model Rules of Procedure under the Administrative Procedure Act, OAR 137-001-0070. Information in the petition shall include:

(a) The public need for recognition of the new discipline;

(b) The number of potential licensees that would be affected;

(c) Whether the new branch is a specialty under an already recognized discipline; and

(d) Recommendations for examination sources in that discipline.

(3) The Board may, at its option, discontinue examining and licensing in any branch at any time that it receives fewer than six qualified applicants in that branch in a three-year period.

(4) For a license as a professional land surveyor the applicant will be examined in land surveying.

(5) For a license as a professional photogrammetrist the applicant will be examined in photogrammetry.

(6) For certification as a water right examiner, the applicant will be examined on water right applications and the preparation of claims of beneficial use.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1978, f. 12-21-78, ef. 1-1-79; EE 1-1981, f. 5-19-81, ef. 6-1-81; EE 1-1984, f. & ef. 3-6-84; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 3-1992, f. 3-19-92, cert. ef. 4-1-92; EE 5-1993, f. 8-3-93, cert. ef. 8-13-93; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 1-2008, f. & cert. ef. 3-12-08; BEELS 2-2008, f. & cert. ef. 7-9-08

820-010-0465

Application for Readmission to Examination

(1) Applicants for registration and for EI and LSI enrollment who did not achieve a passing grade in their first and second written examinations

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will, before re-admittance to a subsequent examination, be required to submit valid evidence of further preparation on their part. Such evidence must include proof of one or more of the following;

- (a) Courses of study undertaken;
 - (b) Special training; or
 - (c) Additional experiences gained since their last examination.
- (2) In all cases, submitted proof must be satisfactory to the Board.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2008, f. & cert. ef. 7-9-08

820-010-0520

Registrants Not Qualified to Practice

Registrants who are delinquent, retired, inactive, suspended or revoked by the Board, are not authorized to engage in the professional practice of engineering, land surveying or photogrammetric mapping. Except as provided in section (2), registrants who are delinquent, retired, inactive, suspended or revoked may not hold out as professional engineers, professional land surveyors, or professional photogrammetrists.

(1) Delinquent registrants. Registrants become delinquent because they fail, within a period of five years from the renewal date, to renew their certificate of registration or to pay their renewal fees or satisfy the required PDH units. A delinquent registrant may return to active status only upon application to the Board, by paying the delinquent renewal fee required by OAR 820-010-0305(3)(r), by satisfying and submitting proof of completion on a form approved by the Board of all delinquent PDH units, at a rate of 15 PDH units per year delinquent, to a maximum of 30 PDH units.

(2) Retired registrants. Registrants may retire once they attain the age of 65, they notify the Board that they are not providing engineering, land surveying, or photogrammetric mapping services to the public and they request retired status. Registrants who are retired may not use their seal. However, retired registrants may sign documents, listing after their name the designation "PE (Retired)," "SE (Retired)," "PLS (Retired)," or "Photogrammetrist (Retired)," as appropriate. A retired registrant may, within a period of 5 years from retirement, return to active status only upon application to the Board, by paying a reinstatement fee required by OAR 820-010-0305(3)(t) and by completing 15 PDH units per year for each year (or part of a year) retired, to a maximum of 30 PDH units.

(3) Inactive registrants. Registrants may place their license on inactive status for one of the following reasons:

(a) A registrant is serving on active duty in the armed forces of the United States for a period of time exceeding one-hundred and twenty (120) consecutive days in a calendar year.

(b) A registrant has suffered a debilitating mental or physical illness, injury or disease that prevents the registrant from engaging in the professional practice.

(c) Registrants must request to be placed on inactive status. Registrants making such requests must provide the following documentation:

(A) With respect to requests made under subsection (a), a registrant must provide copies of military orders or other documentation (for example, a letter on military letterhead) that provides proof of military active duty status in excess of 120 days.

(B) With respect to requests made under subsection (b), a registrant must provide documentation prepared by a licensed physician that the registrant suffers from a specific, named debilitating mental or physical illness, injury or disease that prevents the registrant from engaging in the professional practice, and an estimate of the period of time during when the illness, injury or disease will last or whether it is of an unlimited duration.

(d) An inactive registrant may return to active status only upon application to the Board, by paying a reinstatement fee required by OAR 820-010-0305(3)(p) and by completing 15 PDH units per year for each year (or part of a year) inactive, to a maximum of 30 PDH units.

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

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

Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 2-2008, f. & cert. ef. 7-9-08

820-010-0620

Official Seal

(1) Seals, as referenced by ORS 672.020(2) and 672.025(2), must contain the printed name of the registrant, the date of registration, the number of the registrant's certificate of registration, and the registrant's professional title. The registrant's printed name on the seal will be exactly the same as the name printed on registrant's certificate of registration.

(2) The size, design and content of the seal will be an exact replica, in style, of the examples shown in Exhibit 1 (Official Seals) for the profession or branch of the profession in which the registrant is licensed. (A tolerance of 1/4" is permitted as to the size of the seal). The expiration or renewal date may be made part of the seal. If the expiration or renewal date is not made part of the seal, it must be handwritten, in permanent ink, after the word "Expires" or "Renews." Reduced or enlarged seals are not permitted on

final documents. In addition to these requirements, registrants will use the following seals:

(a) Professional engineers holding a structural engineering certificate will use the seal with the designation "Structural" above the words "Registered Professional Engineer," as shown in Exhibit 1-b. Other registered professional engineers will use the seal shown in Exhibit 1-a;

(b) Registered professional traffic engineer, who may practice only traffic engineering (as indicated by the initials "PTE" after their license number) will use the seal shown in Exhibit 1-f;

(c) Registered professional land surveyors will use the seal shown in Exhibit 1-c;

(d) Registered professional photogrammetrists will use the seal shown in Exhibit 1-d;

(e) Registered water rights examiners will use the seal shown in Exhibit 1-e. [Exhibits not included. See ED. Note].

(3) The seal may be applied to a document by rubber stamp or it may be computer-generated onto the document.

(4) The registrant will sign through the middle of the seal or in the place on the seal as indicated for signature, in handwriting, and in permanent ink.

(5) A digital signature, as an option to a handwritten signature in permanent ink is acceptable for final documents.

(a) The digital signature must be:

(A) Unique to the registrant using it; and

(B) Capable of verification; and

(C) Under the sole control of the registrant using it; and

(D) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(b) Documents signed using a digital signature will bear the phrase "digital signature" in place of the handwritten signature.

(6) Only individuals registered as professional engineers, professional traffic engineers, professional land surveyors, professional photogrammetrists, or certified water rights examiners may use a seal with a shape, form or wording similar to those shown in Exhibit 1. Using such a seal without registration constitutes falsely representing that the person is authorized to practice the profession.

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

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2006(Temp), f. & cert. ef. 12-5-06 thru 6-3-07; Administrative Correction, 6-16-07; BEELS 4-2007, f. & cert. ef. 8-15-07; BEELS 2-2008, f. & cert. ef. 7-9-08

820-015-0010

Processing Complaints

The Board will process complaints as follows:

(1) Anyone may submit a complaint against a licensed or unlicensed person. Complaints must be in writing and include evidence to document all charges.

(2) The Board will conduct a preliminary review of the complaint to establish that there is sufficient evidence to justify proceeding and that the allegations against the respondent are such that, if proven, would result in a penalty or sanction.

(3) If the Board concludes that the complaint may be valid, the Board will contact the respondent by mail and request written comments. Written comments must be received by the Board within two weeks after the Board's request was mailed, unless the Board authorizes an extension. Otherwise, the Board will evaluate the complaint using available evidence other than respondent's comments.

(4) The Board will evaluate all evidence and analysis, including any documentation or comments received from the respondent, Board investigators, Board expert witnesses or peer reviewers, Board staff or a committee of the Board. The Board will then proceed as follows:

(a) If the Board determines that the evidence is insufficient to issue a notice of intent to sanction, the complainant and respondent will be so notified in writing;

(b) If the Board determines that the evidence is sufficient to issue a notice of intent to sanction, the Board will issue such notice.

(5) Upon request of the Board, digitally signed documents must be provided to the Board in a form that can be processed by the Board's information processing systems.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 3-1984, f. & ef. 6-18-84; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2008, f. & cert. ef. 7-9-08

ADMINISTRATIVE RULES

Board of Nursing Chapter 851

Rule Caption: Nursing Education Rules Revised.

Adm. Order No.: BN 3-2008

Filed with Sec. of State: 6-24-2008

Certified to be Effective: 6-24-08

Notice Publication Date: 5-1-2008

Rules Amended: 851-021-0005, 851-021-0010, 851-021-0015, 851-021-0020, 851-021-0025, 851-021-0040, 851-021-0045, 851-021-0050, 851-021-0055, 851-021-0060, 851-021-0065, 851-021-0070, 851-021-0090, 851-021-0120

Subject: These rules cover the standards for the approval of educational programs in nursing preparing candidates for licensure as practical or registered nurses. These amendments are part of a periodic rule review.

Rules Coordinator: KC Cotton—(971) 673-0638

851-021-0005

Definitions

As used in these rules:

(1) "Accreditation" is a voluntary, non-governmental peer review process by the higher education community. For the purpose of these rules, institutional accreditation applies to the entire institution, whereas nursing program accreditation applies to program accreditation by the Commission on Collegiate Nursing Education (CCNE) or the National League for Nursing Accrediting Commission (NLNAC).

(2) "Accrediting agency" means a regional accrediting association or national accrediting agency approved by the U. S. Department of Education (US DOE) and/or the Council on Higher Education Accreditation (CHEA).

(3) "Approval" is synonymous with accreditation as authorized in ORS 678.150, and means the process by which the Board evaluates and grants official recognition and status to nursing education programs that meet Board established uniform and reasonable standards. The status assigned may be Developmental Approval, Initial Approval or Approval.

(4) "Approval by the Office of Degree Authorization" means the approval, under ORS 348.606, to provide any part of a program leading to the award of college credit or to an academic degree.

(5) "Articulation" refers to the process of comparing or matching the coursework completed in one educational institution with the courses or requirements of another institution. For the purpose of these rules, articulation specifically relates to courses completed or required within a nursing education program.

(6) "Basic Master's Program" is a graduate program in nursing leading to initial licensure.

(7) "Board" refers to the Oregon State Board of Nursing.

(8) "Clinical Lab Teaching Assistant" refers to a member of the nursing faculty whose primary responsibility is to assist with clinical lab teaching under the direction of the nurse educator.

(9) "Clinical Teaching Associate" refers to a nurse who has undergone specific education/training to serve as a role model, resource and coach for nursing students. The clinical teaching associate functions under the direction of the nurse educator or nurse educator associate.

(10) "Community-based nursing" is nursing practice that takes place in the context of family and the community.

(11) "Competencies" mean the knowledge, values, attitudes, and interpersonal, clinical reasoning, and psychomotor skills expected for safe and effective nursing practice.

(12) "Controlling Body" is an accredited educational agency planning to conduct or conducting a program in nursing. For purposes of these rules, "institution," "educational institution," or "governing institution" are synonymous with "controlling body."

(13) "Developmental approval" means approval of an application for establishing a new program and authorization to proceed with its development.

(14) "Distance nursing education" means the provision of nursing course(s) to students in settings physically separate from the faculty and the campus-based setting. Distance nursing education includes on-line and web-based portals, videostreaming, interactive television, and use of other electronic course delivery methods.

(15) "Extended campus site" means any location of an institution, other than the main campus, at which the institution offers at least 50 percent of a nursing education curriculum.

(16) "Faculty" means the nursing faculty as a whole, functioning as a collective body.

(17) "Faculty member" means an individual nurse educator, nurse educator associate, or clinical lab teaching assistant.

(18) "Home Board" means the approval or accrediting authority by which a particular nursing program is approved and to which it is accountable.

(19) "Initial Approval" means authorization by the Board to accept students for admission in a new nursing program, or in an extended campus site, when the Board deems the extended campus site to be the equivalent of a new program. Initial approval status continues until the first class has graduated and the Board has taken final action on the application for approval.

(20) "Major curriculum change" means a change that results in a re-focus of purpose and objectives, a substantive change in program structure or method of instructional delivery, or a change that modifies 10% or more of the credit hours in the curriculum.

(21) "May" indicates permission.

(22) "National accreditation" means accreditation granted by the National League for Nursing Accrediting Commission (NLNAC) or Commission on Collegiate Nursing Education (CCNE).

(23) "Nurse Administrator" refers to the registered nurse who is responsible and accountable for the nursing educational department, division or program, regardless of the official title assigned by any specific institution.

(24) "Nurse Educator" refers to a registered nurse who, as a member of the nursing faculty, is responsible for the development and/or implementation of the nursing program, including curriculum, policies, student advising, and evaluation, mentoring and collaborating with nurse educator associates and clinical teaching associates. For the purpose of these rules, the term "nurse educator" includes all nurse faculty members regardless of rank who have responsibility for development and implementation of the program.

(25) "Nurse Educator Associate" refers to a registered nurse who may contribute to classroom and clinical instruction in collaboration with and under the direction of the nurse educator.

(26) "Nursing experience" means practice as a registered nurse. Specified years of nursing experience mean full time equivalence (FTE).

(27) "Organizing framework" means the mission, philosophy, and/or underlying assumptions upon which the curriculum is based.

(28) "Outcomes" are statements of the expected knowledge, skills, attitudes, values and abilities to be gained by students through completion of the nursing education program or a segment thereof.

(29) "Out-of-State Nursing Program" means a program in the United States that is approved or accredited by the licensing board for nurses in the particular state or U.S. territory, or the appropriate accrediting agency for that state or U.S. territory.

(30) "Population-focused nursing" is nursing practice that merges the body of knowledge from the public health sciences with nursing theories for the purpose of safeguarding and improving the health of populations.

(31) "Post-master's certificate" means a certificate from an accredited graduate nursing education program that prepares licensed nurses who hold a master's degree for an advanced nursing role.

(32) "Practice Site" is a location or situation in which nursing experience with actual patient/client individuals or groups is obtained.

(33) "Practicum" is a course or session in which a student obtains experience in nursing in either a laboratory or practice site.

(34) "Program" means a nursing education program that prepares graduates for licensure as registered or licensed practical nurses. The terms "nursing program," or "nursing education program" as used in these rules, are synonymous with "Program."

(35) "Representative of the Board" means the Education Consultant or Board designee qualified to perform the necessary responsibilities.

(36) "Shall" indicates a requirement.

(37) "Site Visit" means that representative(s) of the Board go to the location of a program for specified purpose(s) which may include a survey for approval.

(38) "Standards for Approval" — Authoritative statements that set expectations for a program to achieve and maintain for approval status. (OAR 851-021-0040 through 0070).

(39) "Statewide Need" — Assessment and documentation of the need for the nursing program in relation to plans for total state resources and the need for entry level nurses in the state.

(40) "Survey visit" means that representative(s) of the Board go to the location of a program to review the program for compliance with Standards for Approval, and to prepare a report and recommendation regarding approval status.

(41) "Units or Credits" — For programs on academic quarters, one unit or credit is defined as one academic clock hour per week for ten to 12 weeks or three academic clock hours of practicum per week for ten to 12 weeks. For programs on academic semesters, one unit or credit is defined as one academic clock hour per week for 14 16 weeks or three academic clock hours of practicum per week for 14 16 weeks.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.150

ADMINISTRATIVE RULES

Hist.: NER 9, f. 8-15-62; NER 15, f. 1-4-71, ef. 1-25-71; NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 2-1985, f. & ef. 4-5-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0005; NB 2-1996, f. & cert. ef. 3-12-96; NB 4-1996, f. & cert. ef. 9-3-96; BN 7-1998, f. & cert. ef. 7-16-98; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0010

Approval of Nursing Education Programs

- (1) Application and Developmental Approval:
 - (a) An institution or consortium of accredited institutions wishing to establish a new program in nursing shall make application to develop the program to the Board in advance of anticipated opening date;
 - (b) The application shall include a statement of intent and a feasibility study with at least the following information:
 - (A) Evidence of accreditation of the institution, or of all member institutions in a consortium, by an appropriate regional or national accrediting association or agency; institutions seeking to establish a registered nursing program shall show evidence of
 - (i) Approval as a degree-granting institution of higher education in Oregon, and
 - (ii) Accreditation by a regional association or national agency recognized by the Council on Higher Education Accreditation (CHEA).
 - (B) Studies documenting the statewide need for the program. The study should also specifically address the need for the program in relation to the nursing needs of the geographical area to be served;
 - (C) Evidence that written notice of intent to establish a nursing education program has been provided to the nurse administrator and academic administrator of all Oregon-approved nursing education programs a minimum of 30 days prior to submission of the application;
 - (D) Purpose, size and type of program;
 - (E) Administration and organizational plan delineating lines of authority and decision making;
 - (F) Availability of and ability to recruit and retain qualified faculty members;
 - (G) Projected number of faculty positions;
 - (H) Description of proposed instructional modalities, available and proposed facilities and resources with dates of availability;
 - (I) Availability of adequate practice sites for the program;
 - (J) Availability of adequate educational facilities, services, and resources for the program;
 - (K) Evidence of financial resources adequate for planning, implementation and continuation of the program, including proposed operating costs;
 - (L) Evidence of support for the program and intended program outcomes by the institution, administration, and academic officers;
 - (M) Anticipated student enrollment and proposed date of enrollment;
 - (N) Tentative time schedule for planning and initiating the program;
 - (O) Current institution and program catalog(s).
 - (P) For consortium applicants, any charters, contracts and other documents that show:
 - (i) Relationships among member institutions;
 - (ii) Member institution commitment to the consortium and the proposed nursing program; and
 - (iii) Mechanisms within the consortium for attainment and maintenance of Board standards for nursing education programs.
 - (c) The applicant shall respond to the Board's request(s) for additional information;
 - (d) A site visit may be conducted by a representative(s) of the Board;
 - (e) A school or program concerned about potential adverse impact of the proposed program shall respond to the proposer with a copy to the Board within 15 days of receiving the notice of intent to establish a new program or location.
 - (f) The Board, after timely review and consideration of the information contained in the application and any supplementary information, including statements of potential adverse impact by other programs, shall either approve or deny the application and notify the applicant, including rationale for the decision;
 - (g) If developmental approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;
 - (h) If the applicant does not submit an application for initial approval within 12 months after the date designated for initiating the program in the approved plan, the developmental approval shall expire.
 - (2) Initial Approval:
 - (a) Initial approval status may be applied for when the following conditions have been met:
 - (A) Application as described in OAR 851-021-0010(1) has received Board approval;
 - (B) Evidence of approval for the new program has been obtained from the appropriate agencies or bodies that review and approve new programs for public and private educational institutions.

(i) An institution shall provide one copy of the report that was submitted to each agency and a copy of the letter(s) indicating that approval for the program has been granted;

(ii) A consortium shall provide documentation that each member institution has approved the program, as well as documentation of agency approval as above;

(iii) An institution licensed by the Oregon Department of Education, Private Career Schools section shall provide documentation of current licensure.

(C) A qualified nurse administrator has been appointed and provided with necessary administrative supports a minimum of nine months prior to the beginning of courses;

(D) There are sufficient qualified nurse educators and administrative support services to initiate the program a minimum of six months prior to the beginning of the courses;

(E) A tentative written proposed program plan, including curriculum developed in accordance with the Standards for Approval, has been submitted a minimum of three months prior to the offering of the first course to nursing students;

(F) There is evidence of readiness for admission of students in educational and clinical facilities and policies for admission and progression;

(G) There is a signed agreement(s) for the articulation of program graduates into the next level of nursing education:

(i) Programs leading to a certificate or degree in practical nursing shall have an agreement with an Oregon-approved program preparing candidates for licensure as a registered nurse;

(ii) Programs leading to an associate degree in nursing shall have an agreement with an Oregon-approved program leading to a baccalaureate or higher degree in nursing.

(b) Following Board receipt and review of the information required in OAR 851-021-0010(2)(a), the Board may grant or deny initial approval;

(c) A site visit may be conducted by a representative(s) of the Board;

(d) Initial approval must be received by a program prior to accepting students for admission to the first class of nursing students;

(e) If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;

(f) Interim visits and/or progress reports may be requested by the Board at any time during the initial approval phase and/or following initial approval as deemed necessary by the Board.

(g) If the institution or consortium does not admit a class within 12 months after the date designated for initiating the program in the initial approval application, the initial approval shall expire.

(3) Approval:

(a) Eligibility for approval occurs after the graduation of the first class of students;

(b) Within six months following graduation of the first class, the program shall submit a self study report of compliance with the Standards for Approval and a survey visit shall be made for consideration of approval of the program;

(c) The decision of the Board to grant or deny approval shall be based upon review of a self evaluation report submitted by the program addressing compliance with Board standards, of the success rate of graduates on the national licensure examination, and of a survey report by a representative(s) of the Board;

(d) If approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NB 3-1988, f. & cert. ef. 7-5-88; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0021; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2003, f. & cert. ef. 7-7-03; BN 11-2003, f. & cert. ef. 12-9-03; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0015

Periodic Evaluation of Nursing Education Programs

(1) Procedures for Periodic Evaluation:

(a) All nursing education programs shall be required to demonstrate continuing compliance with the Standards for Approval at least every eight years for continued approval; except that continued approval may be granted for up to ten years when the program has received national accreditation for ten years.

(b) The Board shall require a survey visit for consideration of continued approval, and may require survey visits or interim progress reports at any time. The following situations may be cause for a survey visit to determine if the minimum standards for nursing programs are being met:

(A) Reports relating to violations of OAR 851-021-0040 through 851-021-0070;

(B) Denial, withdrawal or change of program or institution accreditation status by an accrediting agency recognized by the U. S. Department of Education;

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(C) Providing false or misleading information to students or the public concerning the nursing program;

(D) Violation of Board rules;

(E) Inability to secure or retain a qualified director or faculty, resulting in substandard supervision and instruction of students; or

(F) Failure to achieve NCLEX pass rate standards:

(i) A first attempt pass rate of 60% or higher on the licensing examination over a one year period;

(ii) A first attempt pass rate of 70% or higher over two consecutive one year periods, or

(iii) A two-year pass rate of 85% or higher over three consecutive years.

(c) The nursing program may request a survey or site visit. Such request shall be in writing and include the purpose(s) for the visit;

(d) A program shall submit a narrative self evaluation report(s) that provides evidence of compliance with the Standards for Approval at least one month prior to the scheduled survey visit:

(A) The self evaluation report prepared for the national nursing education accreditation body may be substituted in lieu of the Board's survey report if a national accreditation survey is scheduled for that year;

(B) If the national self-evaluation report is submitted in lieu of the Board's survey report, the program shall submit an addendum to the self evaluation report that addresses the Standards for Approval and that provides a guideline as to where the Standards are discussed in the self evaluation report.

(e) The survey visit shall be made by a representative(s) of the Board on dates mutually acceptable to the Board and the program. A Board survey visit may be conducted in conjunction with the national nursing accreditation body survey visit. The Board representative shall write a separate survey report;

(f) The program shall be asked to participate in scheduling survey visit activities;

(g) A draft of the survey visit report shall be made available to the program for review and corrections in factual data;

(h) The administrator of the program and/or designee(s) shall be invited to be present during the presentation of the survey report to the Board;

(i) Following the Board's review and decision, written notification regarding approval of the program, commendations, recommendations or notice of deficiencies with a specified time frame within which the deficiencies must be corrected, shall be sent to the administrator of the institution and the administrator of the nursing education program.

(2) An approved nursing program that becomes accredited by a national nursing accreditation body between OSBN survey visits, may have the next scheduled survey visit adjusted to provide for a review schedule not to exceed a ten year time period.

Stat. Auth.: ORS 678.340 & 678.360

Stats. Implemented: ORS 678.360

Hist.: NER 37, f. & ef. 7-18-77; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0032; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0020

Denial or Withdrawal of Approval

(1) If, in the opinion of the Board, the standards established for approval of new or existing nursing education programs are not being met, notice thereof shall be given in writing to the controlling body, specifying the deficiency(ies) and prescribing the time within which the deficiency(ies) must be corrected.

(2) Approval may be withdrawn if a program fails to correct the deficiency(ies) or achieve specified NCLEX pass rate standards within the time specified after a hearing in which such facts are established.

Stat. Auth.: ORS 678.340 & 678.360

Stats. Implemented: ORS 678.360

Hist.: NER 30, f. & ef. 1-27-76; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0036; NB 4-1996, f. & cert. ef. 9-3-96; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0025

Reports

(1) Program Changes Requiring Notification to the Board. The program shall notify the Board in writing within 30 days of development of the following circumstances:

(a) Change in the nurse administrator of the program;

(b) A significant increase or decrease in planned enrollment that may affect the overall faculty-student ratio or the capacity of institutional facilities or regional practice sites;

(c) Major changes in availability of adequate practice sites for the program that results in reduction in student enrollment or faculty positions;

(d) Change in accreditation status of the controlling body;

(e) Major reductions in the financial support for the program;

(f) Appointment of new faculty members.

(2) Program Changes Requiring Board of Nursing Approval:

(a) Change of Administrative Control:

(A) When control of an educational program is transferred from one institution to another, a report must be submitted to the Board by the receiving institution containing the following information:

(i) Rationale for change;

(ii) Anticipated effects on students, faculty and resources;

(iii) Administrative and organizational plans, including a sound operational budget;

(iv) Plans for the orderly transition of the program;

(v) Application for new program as delineated in OAR 851-021-0010, unless this requirement is waived by the Board of Nursing.

(B) The institution relinquishing the program shall notify the Board of Nursing in writing of the intent to transfer the program, and shall submit to the Board the information requested of programs undergoing voluntary termination (OAR 851-021-0035(1)).

(b) Major Curriculum Change:

(A) When a nursing education program anticipates a major curriculum change, such change shall be submitted to the Board for approval at least three months prior to implementation.

(B) The following materials shall be submitted with the request for curriculum changes:

(i) Rationale for proposed changes including the anticipated effect on faculty, students, resources and facilities;

(ii) Presentation of the differences between the current curriculum and the proposed curriculum;

(iii) A timetable for implementation of change;

(iv) Methods of evaluation that will be used to determine the effects of the change.

(c) Exceptions to qualified faculty members under OAR 851-021-0045(6);

(d) Addition of an extended campus site or distance nursing education option:

(A) The program shall submit a letter of intention to expand offerings to an extended campus site or using distance education technology at least six months prior to planned implementation;

(B) The letter of intent shall include at least the following information:

(i) Plan for qualified faculty for the program at the extended site or with addition of distance education technology;

(ii) Description of available and proposed education facilities and delivery modalities, services and resources with dates of availability;

(iii) Availability of adequate practice sites and provisions for faculty supervision of clinical experiences;

(iv) Tentative time schedule for planning, initiating, and evaluating the program.

(C) The Board may deem the addition of an extended campus site or distance nursing education option as the equivalent of a new program, and require application under OAR 851-021-0010. Notice to the applicant shall include the rationale for the Board decision.

(e) Proposed demonstration project(s) that significantly alter the approved curriculum, model of clinical practica or faculty-to-student ratio.

(A) The program shall submit a letter of intention to implement such a project at least three months prior to the planned implementation.

(B) The letter of intention shall include at least the following information:

(i) Description of the proposed project, including purpose;

(ii) Description of mechanisms and procedures for and student safety and learning effectiveness;

(iii) Plan for evaluation of the project and reporting findings back to the Board; and

(iv) Tentative time schedule for planning, initiating, and evaluating the program.

(3) NCLEX first attempt pass rate standards and reports.

(a) The pass rate will be calculated annually on the basis of a program's pass rate for the total number of first attempt candidates examined over a one year period and a revolving two year period of time.

(b) A program shall present a written plan, in conformance with Board policy, to evaluate and improve graduate performance on the licensing examination in the event that the program fails to maintain an average of

(A) An 85% pass rate or higher over a two year period, or

(B) A 70% pass rate or higher over a one year period.

(4) Annual Reports:

(a) Statistical data and qualitative program information shall be required to be submitted to the Board annually on a form supplied by the Board;

(b) The annual report shall include information to enable monitoring of continued compliance with the Board's rules. Required reports may include data for aggregate and trend analysis.

(5) General Guidelines for Reports:

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(a) The Board shall review reports for approval, or continued approval of nursing education programs or proposals for major curriculum change only at times when the Board is in formal session;

(b) A copy of the report(s) shall be in the Board Office at least six weeks prior to the Board meeting.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Hist.: NER 4-1985, f. & ef. 7-10-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0071; NB 1-1993(Temp), f. & cert. ef. 2-8-93; NB 6-1993, f. & cert. ef. 6-22-93; NB 2-1996, f. & cert. ef. 3-12-96; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0040

Standards for Approval: Organization and Administration

(1) The controlling body shall be accredited by an appropriate regional or national accrediting association or agency and meet all current standards of the accreditor.

(a) Institutions offering registered nurse programs shall be approved as a degree-granting institution of higher education in Oregon, and

(b) Accredited by a regional association or national agency recognized by the Council on Higher Education Accreditation (CHEA).

(2) There shall be a description or organizational chart that clearly illustrates communication and decision making processes within the nursing program, and accountability and communication of the nursing program to the controlling body.

(3) There shall be adequate financial support for the development, implementation, stability and continuation of the program, including required prerequisite and support courses if applicable.

(4) The authority and responsibility for the direction of the program shall be vested in a qualified nurse administrator as specified in OAR 851-021-0045.

(5) The nurse administrator shall have institutional authority and administrative responsibility for the program, including:

(a) Leadership within the faculty for the development, implementation, and evaluation of the program, including curriculum and instructional delivery;

(b) Creation and maintenance of an environment conducive to teaching and learning, including coordination and support of faculty assignments;

(c) Liaison with executive administrators and administrative and student service units of the institution;

(d) Participation in institutional policy and program decisions that affect teaching and learning within the nursing program;

(e) Participation in preparation of the budget;

(f) Administration of the budget;

(g) Facilitation of faculty and faculty member development;

(h) Participation in faculty member performance review;

(i) Recommendation for faculty member appointment, promotion, tenure and retention;

(j) Liaison with the Board related to the program's continuing compliance with the required elements of these rules.

(6) The nurse administrator shall have sufficient time provided for carrying out administrative responsibilities. Instructional responsibilities and responsibilities for administration of other programs shall be consistent with the scope of the administrative responsibility for the nursing program.

(7) Nursing education program policies and procedures shall be in written form, congruent with those of the institution, and shall be reviewed periodically.

Stat. Auth.: ORS 678.150 & 678.340

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 3-1983, f. & ef. 12-1-83; NER 2-1985, f. & ef. 4-5-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0051; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2003, f. & cert. ef. 7-7-03; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0045

Standards for Approval: Nursing Faculty

(1) The faculty shall include a sufficient number of qualified nurse educators and nurse educator associates to meet the identified learning outcomes of the nursing education program.

(2) The nurse administrator and each nurse faculty member shall hold a current, unencumbered license to practice as a registered nurse in Oregon and be academically and experientially qualified for the position to which she/he is appointed.

(3) Faculty teaching in clinical settings shall also hold a registered nurse license to practice and meet requirements in the state in which the clinical experience is occurring.

(4) Each non-nurse faculty member shall be academically and experientially qualified for his/her responsibilities.

(5) The nurse administrator and each faculty member shall demonstrate professional competence and continued development in nursing, nursing education, and assigned teaching responsibilities.

(a) The nurse administrator and each faculty member shall periodically review assigned teaching responsibilities, evaluating and revising professional development plans as indicated.

(b) The institution and nurse administrator shall support faculty in developing and maintaining competence in assigned teaching responsibilities.

(6) Qualifications for practical nurse programs:

(a) The nurse administrator shall:

(A) Hold at least a master's degree in nursing with documentation of preparation and/or experience in curriculum and teaching;

(B) Have at least four years of nursing experience, of which two years shall have been in a teaching or administrative position in a nursing education program.

(b) Each nurse educator shall:

(A) Hold at least a baccalaureate degree in nursing;

(B) Have at least three years of nursing experience.

(c) Each nurse educator associate shall:

(A) Hold at least a baccalaureate degree in nursing; and

(B) Have at least two years of nursing experience.

(d) Each clinical lab teaching assistant shall:

(A) Hold a degree or certificate that is, at a minimum, equivalent to that for which students are being prepared; and

(B) Have at least two years of nursing experience.

(e) If the institutional program in practical nursing is embedded within a program in registered nursing, all faculty member appointments shall meet the qualifications required for registered nurse programs.

(7) Qualifications for registered nurse programs:

(a) The nurse administrator shall:

(A) Hold at least a master's degree in nursing with documentation of preparation and/or experience in curriculum and teaching. In addition, for baccalaureate degree nursing programs, the nurse administrator shall hold an earned doctorate degree;

(B) Have at least five years of nursing experience, of which three years shall have been in a nurse educator or administrative position in a nursing education program.

(b) Each nurse educator shall:

(A) Hold at least a master's degree in nursing or a baccalaureate degree in nursing, and master's in a related field with a post-master's certificate in nursing from a program that is at least two semesters or three quarters in length;

(B) Have at least three years of nursing experience.

(c) Each nurse educator associate shall hold at least a bachelor's degree in nursing with no less than two years of nursing experience.

(d) Each clinical lab teaching assistant shall:

(A) Hold at least the educational level of preparation for which students are being taught; and

(B) Have at least two years of nursing experience.

(8) Any exceptions to subsections (6)(a), (b), (c), (d), (e) and (7)(a), (b), (c), (d), of this rule shall be submitted in writing to the Board and shall include rationale for the request. The Board may grant exceptions for any of the following circumstances:

(a) The education and experience qualifications are deemed equivalent to the requirements; or

(b) The individual has a baccalaureate in nursing, a masters or doctorate in a related field, and relevant nursing experience. The background of the individual is related to the teaching assignment and is complementary to the faculty mix, or

(c) Substantial effort has been made to recruit a qualified faculty member, and the appointed individual is pursuing the needed qualifications; or

(d) Substantial effort has been made to recruit a qualified faculty member, and the individual without full qualification is appointed for one year. The exception may be extended for one year with documentation of either continued and unsuccessful recruitment for a qualified replacement, or a plan to establish eligibility under exception (c) above.

(9) Special Provision for Nursing Faculty. Nurse administrators and faculty members employed as such in Oregon during the 1984-85 academic year may be appointed after September 1, 1985 without meeting new requirements under paragraphs (6)(a)(A), (6)(b)(A), (7)(a)(A) and (7)(b)(A) of this rule.

(10) Faculty Member/Student Ratio:

(a) The number of faculty members appointed shall be not less than one faculty member to every nine students having experience in one or more practice sites at any given time. Effective July 1, 2010, the ratio shall be one faculty member to eight students. A lower ratio shall apply when nursing faculty determine that student/client safety and learning effectiveness warrant.

(b) Factors to be considered in determining the faculty member/student ratio shall be:

(A) Objectives to be achieved;

(B) Preparation and expertise of faculty member;

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- (C) Use of clinical teaching associates;
 - (D) Level of students;
 - (E) Number, type and condition of clients;
 - (F) Number, type, and location of practice sites; and
 - (G) Adequacy of the ratio for nurse faculty to:
 - (i) Assess students' capability to function safely within the practice situation;
 - (ii) Select and guide student experience; and
 - (iii) Evaluate student performance.
 - (c) Clinical teaching associates may be used within the following guidelines:
 - (A) There shall be a written plan for the clinical learning experience consistent with these rules;
 - (B) Clinical teaching associates shall be selected according to written criteria developed by faculty, and agreed to by responsible person(s) in the practice site;
 - (C) A faculty member shall be available to the clinical teaching associate(s) while students are involved in the clinical learning experience;
 - (D) The faculty member shall confer with each clinical teaching associate and student (individually or in groups) regularly during the clinical learning experience;
 - (E) Use of clinical teaching associates does not modify the requirement for faculty member/student ratio, except that the ratio may be modified for final practica.
 - (11) Principal responsibilities of the faculty shall be to:
 - (a) Develop, implement and evaluate the organizing framework and learning outcomes of the program;
 - (b) Construct, implement, evaluate and revise the curriculum;
 - (c) Develop, implement and evaluate policies and standards for the advising, selection, admission, advanced placement, progression and graduation of nursing students within the framework of the policies of the educational institution;
 - (d) Develop, integrate and evaluate student learning experiences including selection of learning activities, appropriate use of emerging teaching and learning methodologies, assessment and guidance of the student and evaluation of client and student safety;
 - (e) Mentor/guide nurse educator associates and clinical teaching associates;
 - (f) Develop, implement and evaluate policies for assessing student achievement in terms of course and program learning outcomes;
 - (g) Evaluate student learning and performance, assign grades for courses according to policies, determine student progression within the program, and recommend successful candidates for the degree or certificate;
 - (h) Develop, implement and evaluate policies and procedures necessary for the operation of the program;
 - (i) Provide for student evaluation of teaching effectiveness;
 - (j) Provide for evaluation of faculty members within the framework of the educational institution;
 - (k) Orient nurse educator associates, clinical teaching associates, and nursing staff in practice sites to the program goals, learning outcomes and expected competencies of the students;
 - (l) Participate in review of the total nursing program;
 - (m) Participate in determining academic policies and procedures of the institution;
 - (n) Participate cooperatively with other nursing programs and agencies to develop appropriate and equitable access to practice sites; and
 - (o) Provide mechanisms for student input into and/or participation in decisions related to the nursing program.
 - (11) Faculty Organization:
 - (a) The nursing faculty shall participate through faculty meetings or other methods in developing, implementing and evaluating the program and curriculum and other responsibilities of the faculty;
 - (b) Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference;
 - (c) Faculty participation in decisions related to developing, implementing, and evaluating the curriculum, and to establishing or modifying nursing program policies shall be documented.
- Stat. Auth.: ORS 678.150, 678.340 & 678.360
Stats. Implemented: ORS 678.150 & 678.360
Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 3-1984, f. & ef. 10-4-84; NER 2-1985, f. & ef. 4-5-85; NER 4-1985, f. & ef. 7-10-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0061; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2001, f. & cert. ef. 7-9-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0050

Standards for Approval: Curriculum

- (1) Curriculum shall:
 - (a) Prepare the student to achieve the nursing competencies necessary for safe practice based on current standards of care;
 - (b) Reflect the identified mission, goals, and learning outcomes of the nursing education program; and
 - (c) Be consistent with the law governing the practice of nursing.

- (2) Curriculum plan shall identify:
 - (a) Competencies or learning outcomes at the course and program level;
 - (b) Learning activities to develop identified competencies. Courses, learning activities and clinical practicum shall be organized in such a manner to have sufficient proximity in time to allow the student to form necessary links of theoretical knowledge, clinical reasoning, and deliberate practice;
 - (A) Clinical practica shall include sufficient direct patient care hours to achieve identified competencies, course and program outcomes.
 - (B) All clinical practica shall be directed and supervised by a nurse educator or nurse educator associate.
 - (C) All programs shall include no less than six (6) contact hours of learning activities related to pain management.
 - (c) Requirements of the educational institution for graduation; and
 - (d) Total units required for graduation.
- (3) Practical Nurse Programs:
 - (a) In practical nursing programs, the course content and clinical experience required shall be a minimum of 42 quarter units or 28 semester units including:
 - (A) Biological, applied, social, and behavioral sciences and humanities: minimum of 18 quarter units or 12 semester units; and
 - (B) Practical Nursing: minimum of 24 quarter units or 16 semester units of which no less than 12 quarter or eight semester units shall be clinical practicum.
 - (b) The Practical Nurse program shall provide theory and faculty-supervised clinical practice in nursing to achieve competencies within the practical nurse scope of practice, including those related to:
 - (A) Creating and maintaining a safe environment of care;
 - (B) Demonstrating professional, legal, and ethical behavior in nursing practice;
 - (C) Applying knowledge and problem-solving skills;
 - (D) Providing safe, clinically competent, culturally sensitive, and client-centered care for the promotion, restoration and maintenance of wellness or for palliation across the lifespan and settings of care;
 - (E) Functioning as a member of the interdisciplinary healthcare team;
 - (F) Applying leadership and management skills to assign, direct and supervise care provided by nursing assistive personnel;
 - (G) Using technology to facilitate communication, manage information, and document care; and
 - (H) Providing cost-effective nursing care and participating in quality improvement strategies.
 - (4) Registered Nurse Program:
 - (a) Registered nurse curricula shall meet all institutional requirements for and culminate in the award of an associate, baccalaureate, masters, or doctoral degree.
 - (b) In registered nurse programs, the course content and clinical experience required shall be a minimum of 84 quarter units or 56 semester units including:
 - (A) Physical, biological, social and behavioral sciences and humanities: minimum of 36 quarter units or 24 semester units; and
 - (B) Nursing: minimum of 48 quarter units or 32 semester units of which no less than 24 quarter units or 16 semester units shall be clinical experience.
 - (c) The Registered Nurse program shall provide theory and faculty-supervised clinical practice in nursing to develop competencies at the registered nursing scope of practice related to:
 - (A) Creating and maintaining a safe environment of care;
 - (B) Demonstrating professional, ethical and legal behavior in nursing practice
 - (C) Using problem-solving skills, reflection, and clinical judgment in nursing practice;
 - (D) Prescribing/directing, managing, delegating and supervising nursing care for individuals, families, or groups;
 - (E) Providing safe, clinically competent, culturally sensitive, client-centered and evidence-based care to promote, restore and maintain wellness or for palliation across the lifespan and settings of care;
 - (F) Providing culturally sensitive and evidence-based teaching, counseling, and advocacy for individuals, families and groups;
 - (G) Participating within and providing leadership for an interdisciplinary team;
 - (H) Applying leadership skills to identify the need for and to promote change;
 - (I) Using communication and information technology effectively and appropriately;
 - (J) Applying and integrating principles of community health and community-based care into practice; and
 - (K) Integrating concepts of resource utilization, quality improvement and systems to enhance care delivery.
 - (L) Baccalaureate and basic masters or doctoral programs shall also include competencies related to:

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(i) Applying epidemiological, social, and environmental data and principles to identify and implement health promotion goals and strategies for communities and populations;

(ii) Assuming leadership and effecting change through participation in teams and beginning application of management knowledge.

(iii) Identifying and implementing measures to improve access to healthcare for individuals and underserved groups;

(iv) Using the principles and practice of research to validate and improve nursing care for individuals, families, and groups; and

(v) Using teaching-learning principles to assist colleagues and healthcare providers to improve nursing care quality.

(5) Programs providing distance nursing education shall:

(a) Deliver the approved curriculum through learning activities designed to allow students to achieve stated learning outcomes or competencies;

(b) Provide learning activities that are sufficiently comprehensive to achieve stated program outcomes and competencies; and

(c) Support instructor-student interaction and meaningful student interaction.

(6) Programs that provide for advanced placement of students shall develop and use policies designed to assure that such students meet the equivalent of the program's current curriculum and competencies.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NER 2-1985, f. & ef. 4-5-85; NB 3-1988, f. & cert. ef. 7-5-88; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0056; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0055

Standards for Approval: Students

The program in nursing is accountable to students by providing that:

(1) Admission, readmission, transfer, progression, retention, dismissal and graduation requirements are available to the students in written form and are consistent with those of the sponsoring institution. Where necessary, policies specific to nursing students may be adopted if justified by the nature and purposes of the nursing program.

(2) Students are admitted without discrimination as to age, race, religion, gender, sexual preference, national origin or marital status.

(3) Facilities and services of the program and its sponsoring institution are documented and available to students.

(4) Distance nursing education programs are effectively supported through accessible modes of delivery, resources, and student support.

(5) Student rights and responsibilities are available in written form.

(6) Students are required to submit to a criminal background check to identify criminal convictions that may:

(a) Pose a risk to public safety;

(b) Preclude the ability to complete required clinical practicum; or

(c) Result in Notice to Deny Licensure on application for initial licensure in Oregon.

(7) By July 1, 2010, there is a signed agreement for the articulation of program graduates into the next level of nursing education:

(a) Programs leading to a certificate or degree in practical nursing shall have an agreement with an Oregon-approved program preparing candidates for licensure as a registered nurse;

(b) Programs leading to an associate degree in nursing shall have an agreement with an Oregon-approved program leading to a baccalaureate or higher degree in nursing.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0068; NB 4-1996, f. & cert. ef. 9-3-96; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0060

Standards for Approval: Records

(1) Program records — A system of records shall be maintained and be made available to the Board representative and shall include:

(a) Reports relating to institutional and program accreditation by any agency or body;

(b) Course outlines;

(c) Minutes of faculty and committee meetings;

(d) Reports of standardized tests; and

(e) Survey reports.

(2) Record(s) shall be maintained for each student, available to the Board representative, and shall include:

(a) Student application;

(b) Student transcript, which must be maintained indefinitely;

(c) Current record of achievement; and

(d) Other records in accordance with state or federal guidelines, program or institution policy, record retention schedule or statute of limitations.

(3) The program shall make provisions for the protection of student and graduate records against loss, destruction and unauthorized use.

(4) Information describing the curriculum shall be published in the college catalog, maintained in archives, and made available upon request.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0074; NB 4-1996, f. & cert. ef. 9-3-96; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0065

Standards for Approval: Facilities and Services

(1) Educational facilities shall include:

(a) Classrooms, laboratories and conference rooms adequate in number, size and type according to the number of students and educational purposes for which the rooms are used;

(b) Offices and conference rooms available and adequate in number and size to meet faculty needs for individual student counseling and faculty meetings;

(c) Space provided for secretarial staff, files, storage and equipment;

(d) Telephones, computers, equipment and support adequate in number and capacity to conduct program business.

(2) Educational services and resources shall include:

(a) Adequate secretarial services;

(b) Adequate library services, holdings, and electronic learning resources;

(c) Adequate student support services such as academic advising, financial aid advising, and academic bookstore services;

(d) Adequate technology to support teaching and learning.

(3) Institutions offering distance nursing education programs shall provide ongoing and appropriate technical, design, and production support for faculty members and technical support services for students.

(4) Selection of practice sites shall be based on written criteria established by faculty including a requirement that the practice sites shall be fully approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.

(5) There is a written agreement that is in effect between the authorities responsible for the educational program and the nursing service or other relevant service of the practice site. The agreement shall include but not be limited to provisions that:

(a) Ensure that faculty members have authority and responsibility to select appropriate learning experiences in collaboration with practice site; and

(b) Clearly specify whether or not clinical teaching associates will be provided by the site, and how they will be selected and function.

Stat. Auth.: ORS 678.150 & 678.360

Stats. Implemented: ORS 678.150, 678.340 & 678.360

Hist.: NER 4-1985, f. & ef. 7-10-85; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0076; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0070

Standards for Approval: Evaluation

(1) There is a comprehensive plan for evaluation of the nursing education program that includes systematic assessment and analysis of:

(a) Compliance with the OSBN Standards for Approval for nursing education programs;

(b) Internal and external measures of Graduate achievement of identified program competencies and learning outcomes;

(c) NCLEX pass rate data, trends, and contributing factors;

(d) Curriculum design including nursing and other required courses, course sequencing and scheduling;

(e) Effectiveness of instructional strategies and methodologies;

(f) Faculty sufficient in number, preparation, experience and diversity to effectively achieve course and program outcomes and maintain client and student safety; and;

(g) Resources, including human, physical, and financial resources to support the number of enrolled students, instructional delivery and achievement of program learning outcomes.

(2) There is evidence that the comprehensive plan for evaluation is being implemented and that evaluative data is used for ongoing program improvement.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NER 30, f. & ef. 1-27-76; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0081; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0090

Standards for Out-of-State Student Clinical Experience in Oregon

(1) Out-of-State Nursing Programs who seek to routinely send groups of students for clinical experience in Oregon

(a) The program shall petition the Board for approval to provide clinical experience in Oregon. The petition shall include:

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(A) Justification or rationale for use of Oregon facilities including description of clinical sites and experiences and the provisions that will be used for client/student safety;

(B) Documentation of home board approval including time frame and any recommendations that are outstanding;

(C) Regional and/or national accreditation status of school;

(D) List of all faculty members with academic and licensure credentials;

(E) Evidence that faculty providing direct clinical supervision meet standards as established in OAR 851-021-0045(2, 6, 7);

(F) NCLEX pass rate, number of candidates and number passing for the past two years ending on the most recent September 30;

(G) Proof of approval by the Oregon Office of Degree Authorization; and

(b) The program shall provide an annual report on a form supplied by the Board to include at least the following information:

(A) Curriculum change that affects the use of Oregon facilities for clinical experience;

(B) Any change in provisions for client/student safety;

(C) List of all faculty members with academic and licensure credentials;

(D) Any change in approval/accreditation status during the annum;

(E) Copy of progress reports (if any) to the home board during the annum;

(F) NCLEX pass rate, number of candidates and number passing for the year ending September 30.

(c) The OSBN may conduct a complete visit to the program of nursing to determine its eligibility for approval at any time, or may accept all or part of the survey and findings on approval from the home state.

(2) Nursing programs with faculty and facilities located in Oregon and approved by another state as of April 1, 1998

(a) The program shall meet the reporting requirements established in OAR 851-021-0025 for Oregon approved nursing programs.

(b) In addition, the program shall:

(A) Report any change in approval/accreditation status within 30 days of such change;

(B) Submit a copy of progress reports (if any) to the home board; and

(C) Annually submit the NCLEX pass rate, number of candidates and number passing for the year ending September 30; and

(D) Demonstrate attainment of OSBN standards for approval through OSBN participation in the regular survey visit conducted by the home board;

(E) Report any change in Office of Degree Authorization approval status of the program.

(c) The OSBN may conduct a complete visit to the program to determine its eligibility for approval at any time, or may accept all or part of the survey and findings on approval from the home state.

(3) Nursing programs that do not regularly send clinical sections to Oregon sites, and that seek to place an individual student for precepted experience

(a) The program shall petition the Board for approval to provide clinical experience in Oregon. The petition shall include:

(A) Justification or rationale for use of Oregon facilities including description of clinical sites and experiences and the provisions that will be used for client/student safety;

(B) Documentation of home board approval including time frame and any currently outstanding recommendations;

(C) Regional and/or national accreditation status of school;

(D) Name and credentials of the contact faculty member;

(E) Name and credentials of a contact person within the Oregon clinical facility;

(F) Evidence that faculty providing clinical supervision meet standards as established in OAR 851-021-0045(2), (6), (7);

(G) Proof of approval by the Office of Degree Authorization; and

(b) The program shall have a written contract with the Oregon clinical facility including but not limited to:

(A) Learning objectives to guide the student experience;

(B) Provisions for client/student safety;

(C) Faculty member of record with provision for availability;

(D) Qualifications for selection of preceptor(s);

(E) Provision that the agency may unilaterally nullify the contract in the event of issues with client safety.

Stat. Auth.: ORS 678.150 & 678.340

Stats. Implemented: ORS 678.150 & 678.340

Hist.: BN 7-1998, f. & cert. ef. 7-16-98; BN 1-2001, f. & cert. ef. 2-21-01; BN 3-2008, f. & cert. ef. 6-24-08

851-021-0120

Nursing-Critical Shortage Area Defined for the Purpose of the Oregon Nursing Services Program

(1) For the purposes of the Oregon Nursing Services Program, a student loan repayment program administered by the Oregon Student Assistance 851-021-0120

(a) A locality or practice setting defined by the Office of Rural Health as "frontier" or "rural"; and/or

(b) A practice specialty determined to be "critical" by the Board of Nursing, in consultation with the Office of Rural Health.

(2) A complete list of practice settings and/or practice specialties considered to be "critical" will be identified annually in Board policy.

Stat. Auth.: ORS 678.031 & 678.150

Stats. Implemented: ORS 678.031

Hist.: BN 1-2002, f. & cert. ef. 3-5-02; BN 3-2003, f. & cert. ef. 4-23-03; BN 3-2008, f. & cert. ef. 6-24-08

Rule Caption: Standards and Scope of Practice for RNs and LPNs Updated.

Adm. Order No.: BN 4-2008

Filed with Sec. of State: 6-24-2008

Certified to be Effective: 6-24-08

Notice Publication Date: 5-1-2008

Rules Adopted: 851-045-0030, 851-045-0040, 851-045-0050, 851-045-0060, 851-045-0070, 851-045-0080, 851-045-0090, 851-045-0100

Rules Repealed: 851-045-0000, 851-045-0005, 851-045-0010, 851-045-0015, 851-045-0016, 851-045-0020, 851-045-0025

Subject: These rules cover the standards and scope of practice for the Licensed Practical Nurse and Registered Nurse. The amendments are part of a periodic rule review.

Rules Coordinator: KC Cotton—(971) 673-0638

851-045-0030

Purpose of Standards and Scope of Practice and Definitions

(1) Purpose of Standards and Scope of Practice:

(a) To establish acceptable levels of safe practice for the Licensed Practical Nurse (LPN) and Registered Nurse (RN);

(b) To serve as a guide for the Board to evaluate safe and effective nursing care as well as a guide to determine when nursing practice is below the expected standard of care; and

(c) To provide a framework for evaluation of continued competency in nursing practice.

(2) Definitions:

(a) "Assignment" means the act of directing and distributing, by a licensed nurse, and within a given work period, the work that each staff member is already authorized to perform;

(b) "Client" means individuals, families, groups, communities, organizations, and populations who are engaged in a relationship with the nurse in order to receive the services provided by the nurse's application of nursing knowledge and skill in practice;

(c) "Comprehensive Assessment" means the extensive collection and analysis of data for the purpose of judging a client's health status and actual or potential health needs. Comprehensive assessment involves, but is not limited to, the synthesis of the biological, psychological, social, sexual, economic, cultural and spiritual aspects of the client's condition or needs, within the environment of practice for the purpose of establishing nursing diagnostic statements, and developing, implementing and evaluating a plan of care;

(d) "Context of Care" means the cumulative factors which affect the manner in which nursing care will be provided for a client. These factors may include, but are not limited to, the practice setting; the urgency of the situation; knowledge, beliefs and abilities of the client; the surrounding environment; and community and industry standards;

(e) "Delegation," except as defined in OAR 851-047-0010 (7), is the process a Registered Nurse uses when authorizing a competent individual to perform a task of nursing, while retaining accountability for the outcome;

(f) "Focused Assessment" means an appraisal of a client's status and situation at hand, through observation and collection of objective and subjective data. Focused assessment involves identification of normal and abnormal findings, anticipation and recognition of changes or potential changes in client's health status, and may contribute to a comprehensive assessment performed by the Registered Nurse;

(g) "Health Education" means the development and provision of instruction and learning experiences for a client, including health teaching and health counseling, using evidence-based information, for the purpose of promoting wellness, preventing illness or disability, maintaining or restoring health, or assisting the client to adapt to the effects of illness or disability;

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(h) "Licensed Nurse" means all Licensed Practical Nurses and Registered Nurses licensed under ORS 678.

(i) "Nursing Diagnostic Statements" means the nursing diagnoses or reasoned conclusions which are developed as a result of nursing assessment. They describe a client's actual or potential health problems which are amenable to resolution by means of nursing strategies, interventions or actions;

(j) "Nursing Interventions" means actions deliberately designed, selected and performed to implement the plan of care;

(k) "Nursing orders" means directives for specific nursing interventions initiated by the Registered Nurse which are intended to produce the desired outcome or objective, as defined in the plan of care;

(l) "Nursing process" means the systematic problem solving method licensed nurses use when they provide nursing care. The nursing process includes assessing, making nursing diagnoses, planning, intervening, and evaluating. The steps of the nursing process are interrelated and together form the basis for the practice of nursing;

(m) "Person-centered Care" means the collaboration with an individual person regarding his or her health care in a manner that is considerate and respectful of the specific wishes and needs of that person;

(n) "Plan of Care" means the written guidelines developed to identify specific needs of the client and intervention/regimen to assist clients to achieve optimal health potential. Developing the plan of care includes establishing client and nursing goals and determining nursing interventions to meet care objectives;

(o) "Professional Boundaries" means the limits that allow for safe and therapeutic connections between the nurse and the client;

(p) "Supervision" means the provision of guidance, direction, oversight, evaluation and follow-up by a licensed nurse for the accomplishment of nursing tasks and activities by other nurses and nursing assistive personnel;

(q) "Tasks of Nursing" means those procedures normally performed by nurses when implementing the nursing plan of care; and

(r) "Unlicensed Assistive Personnel" means individuals who are not licensed to practice nursing, medicine or any other health occupation requiring a license in Oregon, but who may carry out delegated tasks of nursing. For the purpose of these rules, Certified Nursing Assistants and Certified Medication Aides are not considered unlicensed assistive personnel.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 678.010

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

851-045-0040

Scope of Practice Standards for All Licensed Nurses

(1) Standards related to the licensed nurse's responsibilities for client advocacy. The licensed nurse:

(a) Advocates for the client's right to receive appropriate care, including person-centered care and end-of-life care, considerate of the client's needs, choices and dignity;

(b) Intervenes on behalf of the client to identify changes in health status, to protect, promote and optimize health, and to alleviate suffering;

(c) Advocates for the client's right to receive appropriate and accurate information;

(d) Communicates client's choices, concerns and special needs to other members of the healthcare team; and

(e) Protects clients' rights to engage in or refuse to engage in research.

(2) Standards related to the licensed nurse's responsibilities for the environment of care. The licensed nurse:

(a) Promotes an environment conducive to safety and comfort for all levels of care, including self-care and end-of-life care; and

(b) Identifies client safety and environment concerns; takes action to correct those concerns and report as needed.

(3) Standards related to the licensed nurse's responsibilities for ethics, including professional accountability and competence. The licensed nurse:

(a) Has knowledge of the statutes and regulations governing nursing, and practices within the legal boundaries of licensed nursing practice;

(b) Accepts responsibility for individual nursing actions and maintains competence in one's area of practice;

(c) Obtains instruction and supervision as necessary when implementing nursing practices;

(d) Accepts only nursing assignments for which one is educationally prepared and has the current knowledge, skills and ability to safely perform.

(e) Accepts responsibility for notifying the employer of an ethical objection to the provision of specific nursing care or treatment.

(f) Maintains documentation of the method by which competency was gained, and evidence that it has been maintained.

(g) Ensures unsafe nursing practices are reported to the Board of Nursing and unsafe practice conditions to the appropriate regulatory agency(s);

(h) Retains professional accountability when accepting, assigning, or supervising nursing care and interventions;

(i) Demonstrates honesty and integrity in nursing practice;

(j) Promotes and preserves clients' autonomy, dignity and rights in a nonjudgmental, nondiscriminatory manner that recognizes client diversity;

(k) Maintains appropriate professional boundaries; and

(l) Protects confidential client information, and uses judgment in sharing this information in a manner that is consistent with current law.

(4) Standards related to the licensed nurse's responsibilities toward nursing technology. The licensed nurse:

(a) Acquires and maintains knowledge, skills and abilities for informatics and technologies used in nursing practice settings; and

(b) Promotes the selection and use of informatics and technologies that are compatible with the safety, dignity, and rights of the client.

(5) Standards related to the licensed nurse's responsibility to assign and supervise care. The licensed nurse:

(a) Assigns to another person, tasks of nursing that fall within the nursing scope of practice and/or the work that each staff member is already authorized to perform;

(b) Supervises others to whom nursing activities are assigned by monitoring performance, progress, and outcomes.

(c) Ensures documentation of the activity;

(d) Matches client needs with available, qualified personnel, resources and supervision;

(e) Provides follow-up on problems and intervenes when needed;

(f) Evaluates the effectiveness of the assignment and the outcomes of the interventions; and

(g) Revises or recommends changes to the plan of care as needed.

(6) Standards related to the licensed nurse's responsibility to accept and implement orders for client care and treatment. The licensed nurse:

(a) May accept and implement orders for client care from licensed health care professionals who are authorized by Oregon statute to independently diagnose and treat;

(b) May accept and implement recommendations for care in collaboration with other health care professionals;

(c) May accept and implement orders for client care and treatment from Certified Registered Nurse Anesthetists licensed under ORS 678. These orders may be accepted in ambulatory surgical centers, and in hospital settings, as long as independent Certified Registered Nurse Anesthetists practice is consistent with hospital bylaws;

(d) May accept and implement orders for client care and treatment from Physician Assistants licensed under ORS 677, provided that the name of the supervising or agent physician is recorded with the order, in the narrative notes, or by a method specified by the health care facility. At all times the supervising or agent physician must be available to the licensed nurse for direct communication;

(e) Prior to implementation of the order or recommendation, must have knowledge that the order or recommendation is within the health care professional's scope of practice and determine that the order or recommendation is consistent with the overall plan for the client's care; and

(f) Has the authority and responsibility to question any order or recommendation which is not clear, perceived as unsafe, contraindicated for the client or inconsistent with the plan of care.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 678.010

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

851-045-0050

Scope of Practice Standards for Licensed Practical Nurses

(1) The Board recognizes that the scope of practice for the licensed practical nurse encompasses a variety of roles, including, but not limited to:

(a) Provision of client care;

(b) Supervision of others in the provision of care;

(c) Participation in the development and implementation of health care policy;

(d) Participation in nursing research; and

(e) Teaching health care providers and prospective health care providers.

(2) Standards related to the Licensed Practical Nurse's responsibility for nursing practice implementation. Under the clinical direction of the RN or other licensed provider who has the authority to make changes in the plan of care, and applying practical nursing knowledge drawn from the biological, psychological, social, sexual, economic, cultural and spiritual aspects of the client's condition or needs, the Licensed Practical Nurse shall:

(a) Conduct and document initial and ongoing focused nursing assessments of the health status of clients by:

(A) Collecting objective and subjective data from observations, examinations, interviews, and written records in an accurate and timely manner as appropriate to the client's health care needs and context of care;

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(B) Distinguishing abnormal from normal data, sorting, selecting, recording, and reporting the data;

(C) Detecting potentially inaccurate, incomplete or missing client information and reporting as needed;

(D) Anticipating and recognizing changes or potential changes in client status; Identifying signs and symptoms of deviation from current health status; and

(E) Validating data by utilizing available resources, including interactions with the client and health team members.

(b) Select nursing diagnostic statements and/or reasoned conclusions, from available resources, which serve as the basis for the plan or program of care.

(c) Contributes to the development of a comprehensive plan of nursing care, and develops focused plans of nursing care. This includes:

(A) Identifying priorities in the plan of care;

(B) Setting realistic and measurable goals to implement the plan of care in collaboration with the client and the healthcare team; and

(C) Selecting appropriate nursing interventions and strategies;

(d) Implement the plan of care by:

(A) Implementing treatments and therapy, appropriate to the context of care, including, but not limited to, medication administration, nursing activities, nursing, medical and interdisciplinary orders; health teaching and health counseling; and

(B) Documenting nursing interventions and responses to care in an accurate, timely, thorough, and clear manner;

(e) Evaluating client responses to nursing interventions and progress toward desired outcomes.

(A) Outcome data shall be used as a basis for reassessing the plan of care and modifying nursing interventions; and

(B) Outcome data shall be collected, documented and communicated to appropriate members of the healthcare team.

(3) Standards related to the Licensed Practical Nurse's responsibility for collaboration with an interdisciplinary team. The Licensed Practical Nurse:

(a) Functions as a member of the healthcare team to collaborate in the development, implementation and evaluation of integrated client-centered plans of care;

(b) Demonstrates knowledge of roles of members of the interdisciplinary team;

(c) Communicates with the registered nurse and/or other relevant personnel regarding integrated client-centered plans of care; and

(d) Makes referrals as necessary;

(4) Standards related to the Licensed Practical Nurse's responsibility for leadership. The Licensed Practical Nurse:

(a) Contributes to the formulation, interpretation, implementation and evaluation of the policies, protocols and operating guidelines related to nursing practice, and to the needs of the clients served;

(b) Assists with the development and mentoring of other members of the healthcare team; and

(c) Identifies changes in clients and changes in the practice environment that require change in policy and/or protocol.

(5) Standards related to the Licensed Practical Nurse's responsibility for quality of care. The Licensed Practical Nurse:

(a) Identifies factors that affect the quality of client care and contributes to the development of quality improvement standards and processes.

(b) Contributes to the collection of data related to the quality of nursing care; and

(c) Participates in the measurement of outcomes of nursing care and overall care at the individual and aggregate level.

(6) Standards related to the Licensed Practical Nurse's responsibility for health promotion. The Licensed Practical Nurse:

(a) Selects or implements evidence-based health education plans that address the client's context of care, culture, learning needs, readiness and ability to learn, in order to achieve optimal health; and

(b) Evaluates the outcome of health education to determine effectiveness, adjusts teaching strategies, and refers client to another licensed healthcare professional as needed.

(7) Standard related to the Licensed Practical Nurse's responsibility for cultural sensitivity. The Licensed Practical Nurse: Applies a basic knowledge of cultural differences to collaborate with clients to provide healthcare that recognizes cultural values, beliefs, and customs.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 678.010

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

851-045-0060

Scope of Practice Standards for Registered Nurses

(1) The Board recognizes that the scope of practice for the registered nurse encompasses a variety of roles, including, but not limited to:

(a) Provision of client care;

(b) Supervision of others in the provision of care;

(c) Development and implementation of health care policy;

(d) Consultation in the practice of nursing;

(e) Nursing administration;

(f) Nursing education;

(g) Case management;

(h) Nursing research;

(i) Teaching health care providers and prospective health care providers; and

(j) Specialization in advanced practice.

(k) Nursing Informatics.

(2) Standards related to the Registered Nurse's responsibility for nursing practice implementation. Applying nursing knowledge, critical thinking and clinical judgment effectively in the synthesis of biological, psychological, social, sexual, economic, cultural and spiritual aspects of the client's condition or needs, the Registered Nurse shall:

(a) Conduct and document initial and ongoing comprehensive and focused nursing assessments of the health status of clients by:

(A) Collecting objective and subjective data from observations, examinations, interviews, and written records in an accurate and timely manner as appropriate to the client's health care needs and context of care;

(B) Distinguishing abnormal from normal data, sorting, selecting, recording, analyzing, synthesizing and reporting the data;

(C) Detecting potentially inaccurate, incomplete or missing client information and reporting as needed;

(D) Anticipating and recognizing changes or potential changes in client status; Identifying signs and symptoms of deviation from current health status; and

(E) Validating data by utilizing available resources, including interactions with the client and health team members.

(b) Establish and document nursing diagnostic statements and/or reasoned conclusions which serve as the basis for the plan or program of care.

(c) Develop and coordinate a comprehensive and/or focused plan of nursing care. This includes:

(A) Identifying priorities in the plan of care;

(B) Setting realistic and measurable goals to implement the plan of care in collaboration with the client and the healthcare team; and

(C) Developing nursing orders and identifying nursing strategies, interventions and actions;

(d) Implement the plan of care by:

(A) Implementing treatments and therapy, appropriate to the context of care, including emergency measures, interpretation of medical orders, medication administration, independent nursing activities, nursing, medical and interdisciplinary orders, health teaching and health counseling; and

(B) Documenting nursing interventions and responses to care in an accurate, timely, thorough, and clear manner.

(e) Evaluating client responses to nursing interventions and progress toward desired outcomes.

(A) Outcome data shall be used as a basis for reassessing the plan of care and modifying nursing interventions; and

(B) Outcome data shall be collected, documented and communicated to appropriate members of the healthcare team.

(3) Standards related to the Registered Nurse's responsibility for collaboration with an interdisciplinary team. The Registered Nurse:

(a) Functions as a member of the healthcare team to collaborate in the development, implementation and evaluation of integrated client-centered plans of care;

(b) Demonstrates knowledge of roles of members of the interdisciplinary team;

(c) Communicates with other relevant personnel regarding integrated client-centered plans of care; and

(d) Makes referrals as necessary and ensures follow-up on those referrals.

(4) Standards related to the Registered Nurse's responsibility for leadership. The Registered Nurse:

(a) Formulates, interprets, implements and evaluates the policies, protocols and operating guidelines related to nursing practice, and the needs of the clients served;

(b) Assumes responsibility for the development and mentoring of other members of the healthcare team; and

(c) When available, uses evidence to identify needed changes in practice, standards for policy development, and clinical decision-making.

(5) Standards related to the Registered Nurse's responsibility for quality of care. The Registered Nurse:

(a) Identifies factors that affect the quality of client care and develops quality improvement standards and processes;

(b) Applies the knowledge and tools of continuous improvement in practice to improve the delivery of healthcare; and

(c) Measures outcomes of nursing care and overall care at the individual and aggregate level.

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(6) Standards related to the Registered Nurse's responsibility for health promotion. The Registered Nurse:

(a) Develops and implements evidence-based health education plans that address the client's context of care, learning needs, readiness, ability to learn, and culture, to achieve optimal health; and

(b) Evaluates the outcome of health education to determine effectiveness, adjusts teaching strategies, and refers client to another licensed healthcare professional as needed.

(7) Standard related to the Registered Nurse's responsibility for cultural sensitivity. The Registered Nurse: Applies a broad knowledge of cultural differences to collaborate with clients to provide healthcare that recognizes cultural values, beliefs, and customs.

(8) Standards Related to Registered Nurse's responsibility to delegate and supervise the practice of nursing. The Registered Nurse:

(a) Delegates to other Oregon licensed nurses and Certified Nursing Assistants or Medication Aides tasks of nursing that may not be within the licensee's or certificate-holder's normal duties but always fall within the licensee's scope of practice or certificate-holder's authorized duties;

(b) Delegates to Unlicensed Assistive Personnel;

(c) Delegates only within the scope of Registered Nursing practice;

(d) May delegate tasks of nursing, but may not delegate the nursing process. The core nursing functions of assessment, planning, evaluation and nursing judgment cannot be delegated;

(e) Maintains responsibility, accountability and authority for teaching and delegation of tasks of nursing;

(f) Maintains sole responsibility, based on professional judgment, whether or not to delegate a task of nursing or to rescind that delegation;

(g) Maintains the right to refuse to delegate tasks of nursing if the Registered Nurse believes it would be unsafe to delegate or is unable to provide adequate supervision;

(h) Considers the training, experience and cultural competence of the delegated individual as well as facility and agency policies and procedures before delegating.

(i) Delegates tasks of nursing to another individual only if that individual has the necessary skills and competence to accomplish those tasks of nursing safely;

(j) Matches client needs with available, qualified personnel, resources and supervision;

(k) Communicates directions and expectations for completion of the delegated tasks of nursing;

(l) Supervises others to whom nursing activities are delegated and monitors performance, progress, and outcomes. Ensures documentation of the activity;

(m) Evaluates the effectiveness of the delegation and the outcomes of the interventions;

(n) Revises the plan of care as needed;

(o) Follows OAR 851-047-0000 through 851-047-0040 when delegating tasks of nursing in practice settings identified in those rules.

(p) May not delegate the insertion or removal of devices intended for intravenous infusion; and

(q) May not delegate administration of medications by the intravenous route, except as provided in OAR 851-047-0030.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 678.010

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

851-045-0070

Conduct Derogatory to the Standards of Nursing Defined

Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety, and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:

(1) Conduct related to the client's safety and integrity:

(a) Developing, modifying, or implementing standards of nursing practice/care which jeopardize patient safety.

(b) Failing to take action to preserve or promote the client's safety based on nursing assessment and judgment.

(c) Failing to develop, implement and/or follow through with the plan of care.

(d) Failing to modify, or failing to attempt to modify the plan of care as needed based on nursing assessment and judgment, either directly or through proper channels.

(e) Assigning persons to perform functions for which they are not prepared or which are beyond their scope of practice/scope of duties.

(f) Improperly delegating tasks of nursing care to unlicensed persons in settings where a registered nurse is not regularly scheduled.

(g) Failing to supervise persons to whom nursing tasks have been assigned.

(h) Failing to teach and supervise unlicensed persons to whom nursing tasks have been delegated.

(i) Leaving a client care assignment during the previously agreed upon work time period without notifying the appropriate supervisory personnel and confirming that nursing care for the client(s) will be continued.

(j) Leaving or failing to complete any nursing assignment, including a supervisory assignment, without notifying the appropriate personnel and confirming that nursing assignment responsibilities will be met.

(k) Failing to report through proper channels facts known regarding the incompetent, unethical, unsafe or illegal practice of any health care provider.

(l) Failing to respect the dignity and rights of clients, regardless of social or economic status, age, race, religion, sex, sexual orientation, national origin, nature of health needs, or disability.

(m) Engaging in or attempting to engage in sexual contact with a client; and

(n) Failing to maintain professional boundaries with a client.

(2) Conduct related to other federal or state statute/rule violations:

(a) Abusing a client. The definition of abuse includes, but is not limited to, intentionally causing physical or emotional harm or discomfort, striking a client, intimidating, threatening or harassing a client, wrongfully taking or appropriating money or property, or knowingly subjecting a client to distress by conveying a threat to wrongfully take or appropriate money or property in a manner that causes the client to believe the threat will be carried out.

(b) Neglecting a client. The definition of neglect includes but is not limited to carelessly allowing a client to be in physical discomfort or be injured.

(c) Engaging in other unacceptable behavior towards or in the presence of a client such as using derogatory names or gestures or profane language.

(d) Failing to report actual or suspected incidents of client abuse through the proper channels in the work place and to the appropriate state agencies.

(e) Failing to report actual or suspected incidents of child abuse or elder abuse to the appropriate state agencies.

(f) Unauthorized removal or attempted removal of narcotics, other drugs, supplies, property, or money from clients, the work place, or any person.

(g) Soliciting or borrowing money, materials, or property from clients.

(h) Using the nurse client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for nursing services.

(i) Possessing, obtaining, attempting to obtain, furnishing, or administering prescription or controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

(j) Aiding, abetting, or assisting an individual to violate or circumvent any law, rule or regulation intended to guide the conduct of nurses or other health care providers.

(k) Failing to conduct practice without discrimination on the basis of age, race, religion, sex, sexual orientation, national origin, nature of health needs or disability.

(l) Violating the rights of privacy, confidentiality of information, or knowledge concerning the client, unless required by law to disclose such information or unless there is a "need to know."

(m) Violating the rights of privacy, confidentiality of information, or knowledge concerning the client by obtaining the information without proper authorization or when there is no "need to know."

(n) Unauthorized removal of client records, client information, facility property, policies or written standards from the work place; and

(o) Failing to dispense or administer medications, including Methadone, in a manner consistent with state and federal law.

(3) Conduct related to communication:

(a) Inaccurate recordkeeping in client or agency records.

(b) Incomplete recordkeeping regarding client care; including but not limited to failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given.

(c) Falsifying a client or agency record or records prepared for an accrediting or credentialing entity; including but not limited to filling in someone else's omissions, signing someone else's name, recording care not given, fabricating data/values.

(d) Altering a client or agency record or records prepared for an accrediting or credentialing entity; including but not limited to changing words/letters/numbers from the original document to mislead the reader of the record, adding to the record after the original time/date without indicating a late entry.

(e) Destroying a client or agency record or records prepared for an accrediting or credentialing entity.

(f) Directing another person to falsify, alter or destroy client or agency records or records prepared for an accrediting or credentialing entity.

(g) Failing to maintain client records in a timely manner which accurately reflects management of client care, including failure to make a late entry within a reasonable time period.

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(h) Failing to communicate information regarding the client's status to members of the health care team (physician, nurse practitioner, nursing supervisor, nurse co worker) in an ongoing and timely manner; and

(i) Failing to communicate information regarding the client's status to other individuals who need to know; for example, family, facility administrator.

(4) Conduct related to achieving and maintaining clinical competency:

(a) Performing acts beyond the authorized scope or the level of nursing for which the individual is licensed.

(b) Failing to conform to the essential standards of acceptable and prevailing nursing practice. Actual injury need not be established.

(c) Assuming duties and responsibilities within the practice of nursing for direct client care, supervisory, managerial or consulting roles without documented preparation for the duties and responsibilities and when competency has not been established and maintained; and

(d) Performing new nursing techniques or procedures without documented education specific to the technique or procedure and clinical precepted experience to establish competency.

(5) Conduct related to impaired function:

(a) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to physical impairment as evidenced by documented deterioration of functioning in the practice setting and/or by the assessment of a health care provider qualified to diagnose physical condition/status.

(b) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to psychological or mental impairment as evidenced by documented deterioration of functioning in the practice setting and/or by the assessment of a health care provider qualified to diagnose mental condition/status; and

(c) Practicing nursing when physical or mental ability to practice is impaired by use of drugs, alcohol or mind altering substances.

(6) Conduct related to licensure or certification violations:

(a) Practicing nursing without a current Oregon license or certificate.

(b) Practicing as a nurse practitioner or clinical nurse specialist without a current Oregon certificate.

(c) Allowing another person to use one's nursing license or certificate for any purpose.

(d) Using another's nursing license or certificate for any purpose

(e) Resorting to fraud, misrepresentation, or deceit during the application process for licensure or certification, while taking the examination for licensure or certification, while obtaining initial licensure or certification or renewal of licensure or certification.

(f) Impersonating any applicant or acting as a proxy for the applicant in any nurse licensure or certification examination; and

(g) Disclosing the contents of the examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration.

(7) Conduct related to the licensee's relationship with the Board:

(a) Failing to provide the Board with any documents requested by the Board.

(b) Failing to answer truthfully and completely any question asked by the Board on an application for licensure or during the course of an investigation or any other question asked by the Board.

(c) Failing to fully cooperate with the Board during the course of an investigation, including, but not limited to, waiver of confidentiality privileges, except client attorney privilege.

(d) Violating the terms and conditions of a Board order; and

(e) Failing to comply with the terms and conditions of Nurse Monitoring Program agreements.

(8) Conduct related to the client's family:

(a) Failing to respect the rights of the client's family regardless of social or economic status, race, religion or national origin.

(b) Using the nurse client relationship to exploit the family for the nurse's personal gain or for any other reason.

(c) Theft of money, property, services or supplies from the family; and

(d) Soliciting or borrowing money, materials or property from the family.

(9) Conduct related to co workers: Violent, abusive or threatening behavior towards a co worker which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.

(10) Conduct related to advanced practice nursing:

(a) Ordering laboratory or other diagnostic tests or treatments or therapies for one's self.

(b) Prescribing for or dispensing medications to one's self.

(c) Using self-assessment and diagnosis as the basis for the provision of care which would otherwise be provided by a client's professional caregiver.

(d) Billing fraudulently.

(e) Failing to release patient records upon receipt of request or release of information, including after closure of practice, and within a reasonable

time, not to exceed 60 days from receipt of written notification from patient.

(f) Ordering unnecessary laboratory or other diagnostic test or treatments for the purpose of personal gain; and

(g) Failing to properly maintain patient records after closure of practice or practice setting.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150, 678.111 & 678.390

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

851-045-0080

Criminal Conviction History/Falsification of Application Denial of Licensure; Revocation of Licensure

(1) As of the effective date of this rule, the Board will issue a Notice to Deny Licensure to an applicant for initial licensure or re-licensure as a Licensed Practical Nurse or Registered Nurse, following the provisions of the Administrative Procedure Act in contested case hearings, to persons who have been convicted as an adult, or found responsible except for mental illness, or adjudicated as a juvenile for the following crimes as set forth in Oregon law or comparable law in other jurisdictions:

(a) Aggravated Murder, as in ORS 163.095 and 115;

(b) First Degree Manslaughter, as in ORS 163.118;

(c) Second Degree Manslaughter, as in ORS 163.125;

(d) First Degree Assault, as in ORS 163.185;

(e) Second Degree Assault, as in ORS 163.175;

(f) First Degree Criminal Mistreatment, as in ORS 163.205;

(g) Second Degree Criminal Mistreatment, as in ORS 163.200;

(h) First Degree Kidnapping, as in ORS 163.235;

(i) First Degree Rape, as in ORS 163.375;

(j) Second Degree Rape, as in ORS 163.365;

(k) Third Degree Rape, as in ORS 163.355;

(l) First Degree Sodomy, as in ORS 163.405;

(m) Second Degree Sodomy, as in ORS 163.395;

(n) Third Degree Sodomy, as in ORS 163.385;

(o) First Degree Unlawful Sexual Penetration, as in ORS 163.411;

(p) Second Degree Unlawful Sexual Penetration, as in ORS 163.408;

(q) First Degree Sexual Abuse, as in ORS 163.427;

(r) Second Degree Sexual Abuse, as in ORS 163.425;

(s) Contributing to the Sexual Delinquency of a Minor, as in ORS 163.435;

(t) Sexual Misconduct, as in ORS 163.445;

(u) Child Abandonment, as in ORS 165.535;

(2) Any individual who applies for initial licensure or re-licensure as a practical nurse or registered nurse from the effective date of these rules, who has a history of arrests and convictions over an extended period of time will be issued a Notice to Deny Licensure following the provisions of the Administrative Procedure Act in contested case hearings.

(3) All other applicants with conviction histories, other than those listed above, including crimes which are drug and alcohol related, will be considered on an individual basis. The following factors will be considered by the Board:

(a) Evidence of rehabilitation;

(b) The length of time since the conviction to the time of application for licensure as a practical nurse or registered nurse;

(c) The circumstances surrounding the commission of the crime which demonstrate that a repeat offense is not likely; and

(d) Character references.

(4) As of the effective date of these rules, any individual who applies for initial licensure or re-licensure as a practical nurse or registered nurse, and supplies false or incomplete information to the Board on an application for licensure regarding the individual's criminal conviction record, will be issued a Notice to Deny Licensure under the provisions of the Administrative Procedure Act in contested case hearings.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 678.111

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

851-045-0090

Mandatory Reporting Defined

(1) It is not the intent of the Board of Nursing that each and every nursing error be reported.

(2) It is not the intent of the Board of Nursing that mandatory reporting take away the disciplinary ability and responsibility from the employer of the nurse.

(3) Anyone knowing of a licensed nurse whose behavior or nursing practice fails to meet accepted standards for the level at which the nurse is licensed, shall report the nurse to the person in the work setting who has authority to institute corrective action. Anyone who has knowledge or concern that the nurse's behavior or practice presents a potential for, or actual danger to the public health, safety and welfare, shall report or cause a report to be made to the Board of Nursing. Failure of any licensed nurse to com-

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ply with this reporting requirement may in itself constitute a violation of nursing standards.

(4) Any organization representing licensed nurses shall report a suspected violation of ORS Chapter 678, or the rules adopted within, in the manner prescribed by sections (5) and (6) of this rule.

(5) The decision to report a suspected violation of ORS Chapter 678, or the rules adopted within, shall be based on, but not limited to, the following:

(a) The past history of the licensee's performance;
(b) A demonstrated pattern of substandard practice, errors in practice or conduct derogatory to the standards of nursing, despite efforts to assist the licensee to improve practice or conduct through a plan of correction; and

(c) The magnitude of any single occurrence for actual or potential harm to the public health, safety and welfare.

(6) The following shall always be reported to the Board of Nursing:

(a) A nurse imposter. As used here "nurse imposter" means an individual who has not attended or completed a nursing education program or who is ineligible for nursing licensure as a LPN or RN and who practices or offers to practice nursing or uses any title, abbreviation, card, or device to indicate that the individual is licensed to practice nursing in Oregon;

(b) Practicing nursing when the license has become void due to non-payment of fees;

(c) Practicing nursing as defined in ORS 678.010 unless licensed as a registered nurse or licensed practical nurse or certified as a nurse practitioner;

(d) Arrest for or conviction of a crime which relates adversely to the practice of nursing or the ability to safely practice nursing;

(e) Dismissal from employment due to unsafe practice or conduct derogatory to the standards of nursing;

(f) Client abuse;

(g) A pattern of conduct derogatory to the standards of nursing as defined by the rules of the Board or a single serious occurrence;

(h) Any violation of a disciplinary sanction imposed on the licensee by the Board of Nursing;

(i) Failure of a nurse not licensed in Oregon and hired to meet a temporary staffing shortage to apply for Oregon licensure by the day the nurse is placed on staff;

(j) Substance abuse as defined in ORS 678.111(e); and

(k) Any other cause for discipline as defined in ORS 678.111.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

851-045-0100

Imposition of Civil Penalties

(1) Imposition of a civil penalty does not preclude disciplinary sanction against the nurse's license. Disciplinary sanction against the nurse's license does not preclude imposing a civil penalty. Criminal conviction does not preclude imposition of a civil penalty for the same offense.

(2) Civil penalties may be imposed according to the following schedule:

(a) Practicing nursing as a Licensed Practical Nurse (LPN), Registered Nurse (RN), Nurse Practitioner (NP), Certified Registered Nurse Anesthetist (CRNA) or Clinical Nurse Specialist (CNS) without a current license or certificate or Board required concurrent national certification; or prescribing, dispensing, or distributing drugs without current prescription writing authority, due to failure to renew and continuing to practice \$50 per day, up to \$5,000.

(b) Using a limited license to practice nursing for other than its intended purpose \$100 per day.

(c) Nurses not licensed in Oregon hired to meet a temporary staffing shortage who fail to make application for an Oregon license by the day placed on staff \$100 per day up to \$3,000.

(d) Practicing nursing prior to obtaining an Oregon license by examination or endorsement \$100

(e) Nurse imposter up to \$5,000. "Nurse Imposter" means an individual who has not attended or completed a nursing education program or who is ineligible for nursing licensure or certification as a LPN, RN, NP, CRNA or CNS and who practices or offers to practice nursing or uses any title, abbreviation, card or device to indicate that the individual is so licensed or certified to practice nursing in Oregon; and

(f) Conduct derogatory to the standards of nursing \$1,000-\$5,000. The following factors will be considered in determining the dollar amount, to include, but not be limited to:

(A) Intent;

(B) Damage and/or injury to the client;

(C) History of performance in current and former employment settings;

(D) Potential danger to the public health, safety and welfare;

(E) Prior offenses or violations including prior complaints filed with the Board and past disciplinary actions taken by the Board;

(F) Severity of the incident;

(G) Duration of the incident; and

(H) Economic impact on the person.

(g) Violation of any disciplinary sanction imposed by the Board of Nursing \$1,000-\$5,000.

(h) Conviction of a crime which relates adversely to the practice of nursing or the ability to safely practice \$1,000-\$5,000.

(i) Gross incompetence in the practice of nursing \$2,500-\$5,000.

(j) Gross negligence in the practice of nursing \$2,500-\$5,000.

(k) Employing any person without a current Oregon LPN, RN or CRNA license, NP or CNS certificate to function as a LPN, RN, CRNA, NP or CNS subject to the following conditions:

(A) Knowingly hiring an individual in a position of a licensed nurse when the individual does not have a current, valid Oregon license or certificate \$5,000; or

(B) Allowing an individual to continue practicing as a LPN, RN, NP, CRNA or CNS knowing that the individual does not have a current, valid Oregon license or certificate \$5,000.

(l) Employing a LPN, RN, NP, CRNA or CNS without a procedure in place for checking the current status of that nurse's license or certificate to ensure that only those nurses with a current, valid Oregon license or certificate be allowed to practice nursing \$5,000; and

(m) Supplying false information regarding conviction of a crime, discipline in another state, physical or mental illness/physical handicap, or meeting the practice requirement on an application for initial licensure or re-licensure, or certification or recertification \$5,000.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 678.117

Hist.: BN 4-2008, f. & cert. ef. 6-24-08

Rule Caption: Advanced Practice Formulary Abolished.

Adm. Order No.: BN 5-2008

Filed with Sec. of State: 6-24-2008

Certified to be Effective: 6-24-08

Notice Publication Date: 5-1-2008

Rules Amended: 851-056-0004, 851-056-0006, 851-056-0010, 851-056-0012, 851-056-0016, 851-056-0018, 851-056-0026

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

Rules Coordinator: KC Cotton—(971) 673-0638

851-056-0004

Prescriptive Authority Scope of Practice

(1) Prescribing, procuring or authorizing use of legend drugs, controlled substances, therapeutic devices, and other measures, and dispensing drugs consistent with the individual's scope of specialty practice, and competency.

(2) Standing orders, protocols, or written prescriptions may also be given for over-the-counter medications as clinically necessary.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08

851-056-0006

Application Requirements for Initial Prescriptive Authority in Oregon

(1) Current, unencumbered registered nurse license in the State of Oregon.

(2) Currently has or is eligible for an unencumbered nurse practitioner or clinical nurse specialist certificate in the State of Oregon.

(3) Submission of application and fees required by the Board. Fees are nonrefundable. An application not completed after one calendar year will be considered void.

(4) Evidence of successful completion of 45 contact hours of pharmacology as defined in OAR 851-056-0008 including content related to the specialty scope of practice which shall be met through:

(a) Completion within two years prior to the application date; or

(b) Evidence of completion of a 30 hour discrete pharmacology course congruent with the specialty role sought with:

(A) An additional 15 CE hours in pharmacological management congruent with the area of clinical specialty completed in the two years prior to the application date; and

(B) Current prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility; or

(c) Evidence of completion of a clinical nurse specialist or nurse practitioner program within two years prior to application date, which included a 45 hour pharmacology course and subsequent clinical practicum in pharmacologic management of individual patients prior to graduation.

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(5) Evidence of successful completion of required clinical education in patient management. An applicant may be considered to meet this requirement through:

(a) Completion of a directly supervised clinical practicum of no less than 150 hours which includes differential diagnosis and applied pharmacological management of patients congruent with the specialty role sought for academic or continuing education credit; or

(b) Evidence of unencumbered prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility with a minimum of 400 hours utilizing prescriptive authority and patient management within the past two years.

(6) Evidence of successful completion of accredited graduate level nursing courses documented by CE or academic credit. Such courses must include physical assessment, pathophysiology, and clinical management sufficient to prepare the applicant for safe prescribing with individual patients. Integrated courses taken before January 1, 1996 may be considered if content otherwise meets all requirements for equivalency.

(7) Applicants for initial certification as a nurse practitioner shall meet all requirements for prescriptive authority. Clinical nurse specialists may obtain and renew certification with the Board without prescriptive authority.

(8) Initial applicants seeking prescriptive authority who do not meet Oregon's pharmacology requirements shall complete a pharmacology course from a list approved by the Board, equal to a minimum of 45 contact hours.

(9) Nurse practitioners who were certified in Oregon prior to July 1, 1997, and who did not have prescriptive authority as of that date, are not required to obtain prescriptive authority.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08

851-056-0010

Prescription Requirements

(1) A written prescription shall include the date, printed name, legal signature, specialty category/title, business address, and telephone number of the prescribing nurse practitioner or clinical nurse specialist in addition to the required patient and drug information.

(2) A electronically transmitted prescription as defined in OAR 855-006-0015 of the Pharmacy Act shall include the name and immediate contact information of the prescriber and be electronically encrypted or in some manner protected by up-to-date technology from unauthorized access, alteration or use. Controlled substances have additional restrictions as defined by the DEA which shall be followed.

(3) A tamper resistant prescription shall meet criteria as defined in OAR 855-006-0015 of the Pharmacy Act.

(4) Prescriptions may be written for over the counter drugs, durable medical equipment (DME) and devices.

(5) Prescriptions shall be signed by the prescriber with the abbreviated specialty title of the nurse practitioner as per OAR 851-050-0005(9) or the title CNS as per 851-054-0015.

(6) The nurse practitioner or clinical nurse specialist shall comply with all applicable laws and rules in prescribing, administering, and distributing drugs, including compliance with the labeling requirements of ORS Chapter 689.

(7) A nurse practitioner or clinical nurse specialist shall only prescribe controlled substances in conjunction with their own valid and current DEA registration number appropriate to the classification level of the controlled substance.

(8) Clinical nurse specialists and nurse practitioners with prescriptive authority are authorized to prescribe:

(a) Over-the-counter drugs;

(b) Appliances and devices;

(c) Orphan drugs; and

(d) Limited access drugs.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08

851-056-0012

Standards for Clinical Nurse Specialists and Nurse Practitioners with Prescriptive Authority

Evaluation of appropriate prescribing by the Board is constructed based on the following premises:

(1) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;

(2) Clinical nurse specialists may provide care for individuals and populations within their specialty scope of practice;

(3) Prescribing is limited by the individual's scope of practice and knowledge base within that scope of practice;

(4) Clinical nurse specialists and nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005; or 851-054-0020 and 0021;

(5) Clinical nurse specialists and nurse practitioners shall be held independently accountable for their prescribing decisions;

(6) All drugs prescribed shall have Food and Drug Administration (FDA) approval.

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

Stat. Auth.: ORS 678.385

Stats. Implemented: ORS 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 2-2007, f. & cert. ef. 3-13-07; BN 4-2007, f. & cert. ef. 5-2-07; BN 6-2007, f. & cert. ef. 6-26-07; BN 9-2007, f. & cert. ef. 10-1-07; BN 12-2007, f. & cert. ef. 11-21-07; BN 1-2008, f. & cert. ef. 2-25-08; BN 5-2008, f. & cert. ef. 6-24-08

851-056-0016

Conduct Derogatory to the Standards for Prescriptive or Dispensing Authority

(1) The Board may deny, suspend or revoke the authority to write prescriptions and/or dispense drugs for the causes identified in ORS 678.111(1) or with proof that the authority has been abused.

(2) The abuse of the prescriptive or dispensing authority constitutes conduct derogatory to nursing standards and is defined as:

(a) Prescribing, dispensing or distributing drugs which are not FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial.

(b) Prescribing, dispensing, administering, or distributing drugs for other than therapeutic or prophylactic purposes;

(c) Prescribing, dispensing, or distributing drugs to an individual who is not the clinical nurse specialist's or nurse practitioner's client or is not within the scope of practice or type of client population served;

(d) Prescribing, dispensing, or distributing drugs for personal use;

(e) Prescribing, dispensing, administering, or distributing drugs while functionally impaired;

(f) Prescribing, dispensing, administering, or distributing drugs in an unsafe or unlawful manner or without adequate instructions to the client according to acceptable and prevailing standards or practice;

(g) Prescribing, dispensing, or distributing drugs which are specifically restricted under federal law;

(h) Failure to properly assess and document client assessment when prescribing, dispensing, administering, or distributing drugs;

(i) Selling, purchasing, trading, or offering to sell, purchase or trade any drug sample;

(j) Dispensing medications without dispensing authority granted by the Board or other dispensing authority issued by the State of Oregon;

(k) Charging a client or any third party payer in a grossly negligent manner.

Stat. Auth.: ORS 678.111, 678.113 & 678.150

Stats. Implemented: ORS 678.350, 678.370, 678.372, 678.375, 678.380 & 678.385,

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08

851-056-0018

Distributing Drug Samples

(1) Any clinical nurse specialist or nurse practitioner who has prescription writing authority may receive prepackaged complimentary samples of drugs and distribute these samples to clients.

(2) Drug samples which are controlled substances must be maintained in accordance with OAR 851-056-0026 and any applicable state and federal requirements.

(3) All sample distribution shall be clearly documented in the patient's chart and the patient shall be provided with information needed for safe use.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.372 & 678.380

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08

851-056-0026

Rules Relating to Controlled Substances

(1) In the administration, distribution, storage, prescribing, and dispensing of controlled substances, nurse practitioners, and clinical nurse specialists shall comply with all applicable requirements in the Code of Federal Regulations (CFR), Title 21, and state law, including but not limited to, ORS Chapter 430 and 475 and OAR chapter 415 and 855.

(2) Nurse practitioners and clinical nurse specialists shall not dispense a controlled substance without current dispensing authority. Distribution of prepackaged, complimentary drug samples is not considered dispensing (ORS 689.005(9)).

(3) Clinical nurse specialists and nurse practitioners who have authority from the Drug Enforcement Administration (DEA) to prescribe controlled substances must verify evidence of such with their prescriptive authority renewal application. A nurse with prescriptive authority may choose to decline DEA certification and must verify so in writing.

(4) Storage and inventory of controlled substances:

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(a) Samples or quantities of controlled substances shall be stored in a securely locked cabinet on the premises of the nurse practitioner's or clinical nurse specialist's practice location.

(b) Clinical nurse specialists and nurse practitioners who receive samples or quantities of controlled substances shall be responsible for the security, inventory, and disposal of these drugs.

(c) Nurse practitioners and clinical nurse specialists shall maintain inventory records of controlled substances that they receive or distribute for a period of three years. The records shall include:

(A) Drug name, amount received, date received, drug expiration date;

(B) Drug name, amount distributed, date distributed, to whom distributed;

(C) Drug name and the date and place where it was returned for destruction.

(d) Controlled substances that are expired, deteriorated, or unwanted shall be returned to a DEA registered disposal facility. This does not include controlled substances which are properly wasted at the facility where they were to be administered. In this context, "properly wasted" means that on-site destruction of a controlled substance in conformance with applicable state and federal law. Nurse practitioners and clinical nurse specialists shall not personally destroy controlled substances.

(e) Controlled substances must be transported in a secured, locked container.

(f) Client records shall state the distribution of controlled substance samples.

(g) Theft of controlled substances shall be immediately reported upon discovery to the DEA and to any other required authorities.

(h) Clinical nurse specialists and nurse practitioners who receive controlled substances shall cooperate with the Board in their inspection of records and physical inventory of controlled substances. Inventory of all controlled substances shall be taken by the prescriber responsible for their receipt and storage every year on the same date as the biennial inventory required by 21 CFR 1304.13.

(i) If requested by the Board, any nurse practitioner or clinical nurse specialist who receives controlled substances shall submit a copy of inventory records from the preceding two years for review.

(5) Prescribing controlled substances:

(a) Nurse practitioners and clinical nurse specialists shall only prescribe the controlled substances from Schedules II-V, as authorized by the Oregon State Board of Nursing. Clinical nurse specialists and nurse practitioners shall only prescribe at the level provided for on their DEA certificate.

(b) Schedule II controlled substances shall not be prescribed for the purpose of weight reduction or control. Schedule III-IV controlled substances may be prescribed for weight reduction in accordance with FDA product guidelines.

(c) Clinical nurse specialists and nurse practitioners shall not prescribe, dispense, or order controlled substances, including Methadone, for narcotic addiction treatment.

(6) Intractable or chronic pain management:

(a) Nurse practitioners and clinical nurse specialists may prescribe or administer controlled substances to a person in the course of their treatment for a diagnosed condition causing pain, defined in OAR 851-056-0000(13).

(b) The diagnosis and treatment of intractable or chronic pain requires documentation of the following:

(A) A recent diagnosis of the condition (if acute or unstable), or past diagnosis (if chronic and stable) causing pain, by one or more licensed practitioners specializing in the treatment of the body area, system, or organ perceived as the source of pain; and

(B) A written material risks notice specific to the patient's condition and treatment; and

(C) A consultation and review of the pain treatment plan where clinically indicated if the patient shows limited or no improvement.

(c) Nurse practitioners and clinical nurse specialists must have a complete discussion with the patient or person authorized to make health care decisions for the patient regarding the diagnosis, as well as the risk, benefits, alternatives, side effects, and potential for addiction and withdrawal of the controlled substance, along with any other applicable precautions. These discussions must be documented in the patient record. Documentation must include a plan for period review of patient response and follow-up.

(d) Nurse practitioners and clinical nurse specialists shall document patient use of controlled substances for chronic or intractable pain, including history and assessment to rule out substance abuse. Evidence of patient addiction or abuse requires referral and/or transfer of care for further diagnosis and treatment.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.111, 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08

Rule Caption: Rules Revised to remove the Requirement for Social Security Number and Course Summary Form.

Adm. Order No.: BN 6-2008

Filed with Sec. of State: 6-24-2008

Certified to be Effective: 6-24-08

Notice Publication Date: 5-1-2008

Rules Amended: 851-061-0050, 851-061-0070, 851-061-0100

Subject: These rules cover the standards for training programs for Nursing Assistants and Medication Aides.

Rules Coordinator: KC Cotton—(971) 673-0638

851-061-0050

Denial or Withdrawal of Program Approval

(1) The Board may deny or withdraw approval if standards for approval of new or existing nursing assistant level 1, level 2, or medication aide training programs are not being met:

(a) Notice of the deficiency(ies) shall be given in writing to the program director;

(b) The program director may submit evidence of correction to the Board;

(c) The Board may withdraw program approval immediately or prescribe the time within which the deficiency(ies) shall be corrected;

(d) The approval may be withdrawn, if the program fails to correct the deficiency(ies) within the time specified;

(e) A program may request a hearing if the approval is withdrawn; and

(f) The withdrawal may be effective after the last currently enrolled student has completed the program.

(2) Pursuant to Federal Regulations the Board shall deny approval to a nursing assistant training program and shall withdraw approval from a previously approved nursing assistant training program offered by or in a licensed nursing facility or a skilled nursing facility which, in the previous two years:

(a) Has operated under a waiver of the federal requirement for nursing facilities and skilled nursing facilities to have 24 hour a day licensed nurse staffing with eight hour a day registered nurse staffing when such waiver is in excess of 48 hours per week; or

(b) Has been determined by surveyors from the state Seniors and People with Disabilities Division or federal Center for Medicare and Medicaid Services to have conditions which pose an immediate threat to resident health and safety; or

(c) Has been subject to an extended or partial extended survey, a restriction of admissions or an impending restriction of admissions for provision of substandard quality of care; or

(d) Was subject to a denial of payment under federal law; or

(e) Has had its Medicare participation terminated under federal or state law; or

(f) Was assessed a civil penalty of \$5,000 or more for deficiencies in nursing facility standards; or

(g) Has operated under trusteeship appointed to oversee the operation of the nursing facility and to ensure the health and safety of its residents; or

(h) As a result of state action terminated the operation of the facility or was closed or has had its residents transferred.

(3) A program or facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2) may apply for waiver of prohibition if:

(a) The facility has received written notice from Seniors and People with Disabilities Division's Client Care Monitoring Unit that it is in compliance with regulations governing licensure and/or certification; and

(b) There is not another program within ten road-miles from the facility submitting the request.

(4) The letter of request for waiver of prohibition shall:

(a) Address the distance in road-miles from the sanctioned facility to the closest program or facility that is willing and eligible for approval to serve as a clinical site for the training program; and

(b) Include a written statement of compliance with the standards for licensure and certification.

(5) The Board shall grant or deny the waiver based upon information received from applicant and Seniors and People with Disabilities Division's Client Care Monitoring Unit.

(6) The Board may withdraw program approval of a nursing assistant level 1 or medication aide training program if:

(a) The program cannot provide satisfactory evidence that the standards for nursing assistant or medication aide training programs are consistently maintained; or

(b) No classes have been taught for 24 consecutive months; or

(c) The average pass rate for graduates of the program falls below 85% over a two year period; or

(d) The clinical facility fails to permit a site visit of the training program.

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(7) The Board may withdraw program approval of a nursing assistant level 2 training program if:

(a) Standards for program approval are not met as determined by a survey visit or interim self evaluation report which may be required by the Board at any time, for any purpose, and may be announced or unannounced; and

(b) A site visit is not permitted or records are not available for review.

(8) When program approval is withdrawn, the program shall:

(a) Submit a plan to the Board within ten working days for completion of the currently enrolled students;

(b) Allow students who have started a training program from which approval has been withdrawn to complete the course; and

(c) Submit the required student information to the Board, using the Board approved format, when the students have completed the course.

(9) The Board may reinstate approval of the nursing assistant or medication aide training program upon submission of satisfactory evidence that the program meets the Board standards.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 6-2008, f. & cert. ef. 6-24-08

851-061-0070

Reports

(1) When ownership of a nursing assistant or medication aide training program changes, a report must be submitted to the Board containing the following information:

(a) Anticipated effects on students, faculty and resources; and

(b) Plans for the orderly transition of the program.

(2) Program data to be sent to Board:

(a) Nursing assistant level 1 and medication aide training programs shall register with the Board:

(A) By the end of the second class day, the students':

(i) Names;

(ii) Dates of birth;

(iii) Board approved unique identifier; and

(iv) Current addresses.

(B) Within two weeks of completion of a class, the students':

(i) Names;

(ii) Dates of birth;

(iii) Board approved unique identifier;

(iv) Current addresses; and

(v) Dates of program completion.

(b) Nursing assistant level 2 training programs shall submit to the Board, within two weeks of completion of a class, verification of competency evaluation by the Board approved format.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 6-2008, f. & cert. ef. 6-24-08

851-061-0100

Standards for Program Approval: Responsibility to Students

The nursing assistant level 1 and medication aide training programs will be accountable to students by:

(1) Providing reasonable assurance that expectations of becoming a certified nursing assistant or medication aide will be met, as evidenced by an 85% pass rate for first-time candidates taking the Board-approved competency examination.

(2) Informing students of the following information:

(a) That for facility-based nursing assistant level 1 programs, no student who is employed by, or who has received an offer of employment from a facility on the date on which the student begins training will be charged for any portion of the program, including any fees for textbooks or other required course materials in accordance with 42 CFR § 483.152(c)(1).

(b) The Department of Human Services and Board of Nursing's criminal history requirements and policies. This information shall be provided to students prior to admission to the program.

(3) Issuing a certificate of completion or making an appropriate notation on a transcript for a graduate who has successfully completed the training. The certificate is to be printed on one side of a standard letter-sized piece of paper and is to include:

(a) Name of individual;

(b) Board approved unique identifier;

(c) Date of birth;

(d) Name of training program;

(e) Number of classroom hours;

(f) Number of clinical hours;

(g) Date the training program was most recently approved by the

Board;

(h) Signature of the program director or primary instructor; and

(i) Date of completion.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2006, f. & cert. ef. 5-8-06; BN 6-2008, f. & cert. ef. 6-24-08

Board of Optometry Chapter 852

Rule Caption: Defines contact lens; establishes optometric authority to use, prescribe and dispense therapeutic contact lens.

Adm. Order No.: OPT 1-2008

Filed with Sec. of State: 6-25-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Amended: 852-001-0002, 852-080-0030

Subject: 852-001-0002(9)(a)(b)(c) — Establishes definitions of various use contact lenses.

852-080-0030(10) — Establishes the authority for Doctors of Optometry to use, prescribe and dispense therapeutic lenses that include pharmaceutical agents listed on the topical formulary.

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

852-001-0002

Definitions

As used in this division:

(1) "Board" means the Oregon Board of Optometry.

(2) "Board's Office" means the facility located at 1900 Hines Street SE, P.O. Box 13967, Salem, OR 97309-1967.

(3) "Board Administrator" means the Executive Director for the Oregon Board of Optometry.

(4) "Firms" means an individual or firm technically and financially qualified to perform certain types of work classified as personal services.

(5) "Lenses" means pieces of glass or other transparent substances that have two opposite surfaces either both curved or one curved and the other plane that are used singly or in combination to aid the human eye in focusing rays of light. These devices shall not be confused with "contact lenses" which are designed to fit directly on the surface of the eye (cornea).

(6) "Spectacles" means ophthalmic frames and lenses.

(7) "Appurtenances" means an accessory or auxiliary device to ophthalmic frames.

(8) "Prescription" means the signed written prescription which a doctor of optometry shall immediately release to the patient at the time he/she would provide spectacles or contact lenses without additional examination.

(9) "Contact Lens" means a lens designed to fit over the cornea of the eye.

(a) "Ophthalmic contact lens" means a contact lens with or without refractive power, including a plano lens or a cosmetic lens.

(b) "Bandage contact lens" means a continuous-wear soft contact lens used as a therapeutic bandage.

(c) "Therapeutic contact lens" means a contact lens that contains a topical therapeutic pharmaceutical agent listed in Division 80.

Stat. Auth.: ORS 182 & 683

Stats. Implemented: ORS 182.466, 683.010 & 683.335

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 1-1992(Temp), f. & cert. ef. 5-6-92; OP 2-1992, f. & cert. ef. 10-21-92; OP 4-1994, f. & cert. ef. 10-11-94; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 1-2008, f. 6-25-08, cert. ef. 7-1-08

852-080-0030

Conditions of Formulary Application

The following conditions apply to the formulary of pharmaceutical agents in 852-080-0020 and 852-080-0025:

(1) Doctors of optometry certified for Topical and Nontopical Therapeutic Pharmaceutical Agents may use, administer, and prescribe any and all over-the-counter pharmaceutical agents.

(2) Doctors of optometry certified for topical TPA use may use, administer and prescribe topical agents in Categories 1–16.

(3) Doctors of optometry certified for nontopical TPA use may use, administer and prescribe topical and nontopical agents in Categories 1–24 as indicated for procedures that are permitted under OAR chapter 852, division 20 — Standards of Optometric Practice.

(4) Doctors of Optometry treating a patient with antiglaucoma medication shall consult with an ophthalmologist if:

(a) The glaucoma progresses despite the use of two glaucoma medications;

(b) More than two medications are required to control the glaucoma;

(c) A secondary glaucoma develops.

(A) Glaucoma shall be considered to be progressing if, in comparison to prior examinations, there is a reproducible worsening of the patient's visual field as measured by standard threshold testing or if there is a worsening of the patient's optic nerve as measured by direct observation or stan-

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dard imaging technology or by rising eye pressure despite the use of two or more medications.

(B) Glaucoma shall be considered to be under control if target eye pressure, individualized for each patient, is maintained with no abnormal glaucomatous progression.

(C) A combination medication that contains two pharmacologic agents shall be considered one medication.

(5) Doctors of optometry certified for nontopical TPA shall consult with a doctor of medicine or doctor of osteopathy, licensed under chapter 677, prior to extending treatment with nontopical corticosteroids or Schedule III analgesics beyond 7 days. They should be diligent in preventing the diversion of drugs for illegitimate purposes.

(6) Doctors of optometry may not use, administer or prescribe agents classified principally as anti-neoplastics.

(7) Doctors of optometry may use or administer pharmaceutical agents in cases of emergency requiring immediate attention.

(8) Doctors of optometry certified for nontopical TPA with injections (ATI) use may administer subcutaneous and subconjunctival injections. Sub-Tenon, retrobulbar, intraocular and botulinum toxin injections are excluded.

(9) Doctors of optometry certified for nontopical TPA use, may administer oral pre-medication for light sedation. Conscious sedation, deep sedation or general anesthesia are excluded.

(10) Doctors of optometry certified for topical or nontopical TPA use may prescribe and dispense therapeutic contact lenses that include pharmaceutical agents listed on the topical formulary in OAR 852-80-020.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.240, 683.270 & 182.466

Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 4-1998, f. 6-25-98, cert. ef. 7-1-98; OPT 1-2000, f. & cert. ef. 3-15-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 2-2007, f. 12-7-07 & cert. ef. 1-1-08; OPT 1-2008, f. 6-25-08, cert. ef. 7-1-08

Board of Pharmacy Chapter 855

Rule Caption: Adopt by reference the 2008 version of Attorney General's Model Rules of Procedure.

Adm. Order No.: BP 3-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

Notice Publication Date:

Rules Amended: 855-001-0005

Subject: Adopts by reference, 2008 version of Attorney General's Model Rules of Procedure, OAR 137-001-0005 through 137-001-0100 and OAR 137-003-0000 through 137-003-0700.

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

855-001-0005

Model Rules of Procedure

The following Model Rules of Procedure promulgated by the Attorney General of the State of Oregon in effect on January 01, 2008, are adopted by the Board by reference. These rules apply to rule making and to the conduct of contested cases, respectively.

(1) OAR 137-001-0005 through 137-001-0100;

(2) OAR 137-003-0000 through 137-003-0700.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Pharmacy.]

Stat. Auth.: ORS 183.341 & 689.205

Stats. Implemented: ORS 183.341

Hist.: 1PB 25, f. 3-20-72, ef. 4-15-72; 1PB 31, f. 11-20-73, ef. 12-11-73; 1PB 42, f. & ef. 4-6-76; Renumbered from 855-010-0030; 1PB 7-1978(Temp), f. & ef. 7-1-78; 1PB 9-1978, f. & ef. 10-23-78; 1PB 1-1980, f. & ef. 1-21-80; 1PB 3-1981, f. & ef. 12-15-81; PB 2-1987, f. & ef. 3-30-87; PB 5-1988, f. & cert. ef. 10-17-88; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2001, f. & cert. ef. 3-5-01; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 5-2004, f. & cert. ef. 10-1-04; BP 13-2006, f. & cert. ef. 12-19-06; BP 3-2008, f. & cert. ef. 7-1-08

Bureau of Labor and Industries Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 17-2008

Filed with Sec. of State: 6-18-2008

Certified to be Effective: 6-18-08

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.

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, 2008, 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, 2008, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006).

(b) Amendments/Corrections to January 1, 2008 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 December 21, 2007).

(c) Amendments/Corrections to January 1, 2008 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 January 4, 2008).

(d) Amendments/Corrections to January 1, 2008 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 February 15, 2008).

(e) Amendments/Corrections to January 1, 2008 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 March 7, 2008).

(f) Amendment to Oregon Determination 2008-01 (effective April 1, 2008).

(g) Amendments/Corrections to January 1, 2008 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, 2008).

(h) Amendments/Corrections to January 1, 2008 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 4, 2008).

(i) Amendments/Corrections to January 1, 2008 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 18, 2008).

(j) Amendments/Corrections to January 1, 2008 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 25, 2008).

(k) Amendments/Corrections to January 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 6, 2008).

(l) Amendments/Corrections to January 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 13, 2008).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon* subject to BOTH the state PWR and federal Davis-Bacon Act dated January 1, 2008, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002,

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f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02, cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04, cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06, cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06, cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07, cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07, cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07, cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08

Rule Caption: Clarifies licensing requirements for employees of Farm Labor Contractors/Indorsements.

Adm. Order No.: BLI 18-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 6-23-08

Notice Publication Date: 6-1-2008

Rules Amended: 839-015-0141

Subject: This rule amendment makes permanent a temporary rule adopted on May 5, 2008 clarifying that one of the conditions for being licensed as a farm or forest labor contractor subject to an employee indorsement under the Farm Labor Contractor law includes that the employee is not otherwise licensed under the Farm Labor Contractor law.

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

839-015-0141

Licensing Requirements for Employees of Contractor/Indorsements

(1) The employee of a farm or forest labor contractor who is licensed under ORS 658.405 to 658.503 may be licensed as a farm or forest labor contractor subject to an employee indorsement if the employee continuously meets all of the following conditions:

(a) The employee's employer has filed with the Commissioner of the Bureau of Labor and Industries a signed statement, in a form required by the commissioner, agreeing to sponsor the application and to notify the commissioner promptly upon termination of the employment of the employee;

(b) The employee engages in activities that would require licensing as a farm or forest labor contractor solely on behalf of the employer;

(c) The employee does not personally employ any workers and is not responsible for paying any workers;

(d) The employer maintains proof of financial responsibility pursuant to ORS 658.415(3);

(e) The employer's license remains in good standing; [and]

(f) The employee meets all of the conditions for licensing as a farm or forest labor contractor provided for in OAR 839-015-0140; and

(g) The employee is not otherwise licensed in any manner as a farm or forest labor contractor under these rules.

(2) A farm or forest labor contractor subject to an employee indorsement acting in compliance with section (1) of this rule need not comply with OAR 839-015-0140(7), (9) and (10) insofar as the employer has complied with these provisions.

(3) The license of a farm or forest labor contractor subject to the employee indorsement shall state on its face the conditions contained in this rule and shall state further that the bearer of the license is licensed to act only as conditioned by this rule.

(4) The license of a farm or forest labor contractor subject to an employee indorsement shall terminate immediately upon the termination of the employment relationship with the employer who sponsored the employee's application. The employee shall submit the license to the bureau forthwith.

(5) A license subject to an employee indorsement may be terminated either by the employee or by the sponsoring employer by notifying the bureau in writing that either wishes to terminate the license or that the con-

ditions specified in section (1) of this rule are no longer met.

(6) The license subject to an employee indorsement terminates upon receipt by the bureau of notice referred to in section (5). The employer's joint and several liability for actions taken by the employee under color of the employee's license pursuant to Ch. 73, Sec. 3(6), 1995 Oregon Laws, extends to any actions taken by the employee before the original license is surrendered to the bureau.

Stat. Auth.: OL Ch. 73, Sec. 3, 1995

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 2-1996, f. & cert. ef. 1-9-96; BLI 13-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 11-1-08; BLI 18-2008, f. & cert. ef. 6-23-08

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 19-2008

Filed with Sec. of State: 6-26-2008

Certified to be Effective: 6-26-08

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, 2008.

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, 2008, 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, 2008, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006).

(b) Amendments/Corrections to January 1, 2008 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 December 21, 2007).

(c) Amendments/Corrections to January 1, 2008 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 January 4, 2008).

(d) Amendments/Corrections to January 1, 2008 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 February 15, 2008).

(e) Amendments/Corrections to January 1, 2008 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 March 7, 2008).

(f) Amendment to Oregon Determination 2008-01 (effective April 1, 2008).

(g) Amendments/Corrections to January 1, 2008 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, 2008).

(h) Amendments/Corrections to January 1, 2008 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 4, 2008).

(i) Amendments/Corrections to January 1, 2008 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 18, 2008).

(j) Amendments/Corrections to January 1, 2008 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 25, 2008).

(k) Amendments/Corrections to January 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 6, 2008).

(l) Amendments/Corrections to January 1, 2008 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

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June 13, 2008).

(m) Amendments/Corrections to January 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 20, 2008).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2008, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 12-2002, 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

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 20-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

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, 2008.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2008, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2008, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006).

(b) Amendments/Corrections to July 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 6, 2008).

(c) Amendments/Corrections to July 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 13, 2008).

(d) Amendments/Corrections to July 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 20, 2008).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2008, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 12-2002, 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

Rule Caption: Clarifies requirements relating to the provision of meal periods to employees.

Adm. Order No.: BLI 21-2008

Filed with Sec. of State: 7-8-2008

Certified to be Effective: 7-8-08

Notice Publication Date: 6-1-2008

Rules Amended: 839-020-0050

Subject: This rule amendment clarifies the agency's rules pertaining to the provision of rest and meal periods to employees, making clear that employees must be relieved of all duties for meal periods except in those cases where the employer can show that exceptional and unanticipated circumstances prevent the employee from being relieved from all duty. The rule amendment also clarifies that factors to be considered in determining an employee is prevented from receiving regularly scheduled meal and rest periods must pertain to the ordinary nature of work performed.

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

839-020-0050

Meal and Rest Periods

(1) Except as otherwise provided, every employer shall provide to each employee an appropriate meal period and an appropriate rest period.

(a) "Appropriate meal period" means:

(A) A period of not less than 30 minutes during which the employee is relieved of all duties for each work period of not less than six or more

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than eight hours. If the work period is seven hours or less, the meal period is to be taken between the second and fifth hour worked. If the work period is more than seven hours, the meal period is to be taken between the third and sixth hour worked; or

(B) A period in which to eat (for each work period of not less than six or more than eight hours) while continuing to perform duties or remain on call, which is not deducted from the employee's hours worked. This is permitted only in those cases where the employer can show that exceptional and unanticipated circumstances of the work prevent the employee from being relieved from all duty.

(b)(A) "Appropriate rest period" means: A period of rest of not less than ten minutes for every segment of four hours or major part thereof worked in one work period without deduction from the employee's pay. The period of rest must be in addition to and taken separately from the time allowed for the usual meal period. Insofar as feasible, considering the ordinary nature of the work, such period of rest is to be taken by an employee approximately in the middle of each four hour (or major part thereof) segment. The rest period is not to be added to the usual meal period or deducted from the beginning or end of the work period to reduce the overall length of the total work period.

(B) The provisions of section (1) of this rule regarding appropriate rest periods do not apply when all of the following conditions are met:

(i) The employee is 18 years of age or older; and

(ii) The employee works less than five hours in any period of 16 continuous hours; and

(iii) The employee is working alone; and

(iv) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and

(v) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

(2) In the absence of regularly scheduled meal periods and rest periods, it will be sufficient compliance with section (1) of this rule when the employer can show that the employee has, in fact, received the time specified within the time periods required by section (1). This is permitted only in those cases where the employer can show that the ordinary nature of the work prevent the employer from establishing and maintaining a regularly scheduled meal period and rest period.

(3) For the purposes of 839-020-0050, factors to be considered in determining the ordinary nature of work which prevent an employee from receiving regularly scheduled meal and rest periods may include, but are not limited to, the following: The safety and health of employees, patients, clients, and the public; availability of other employees to provide relief; qualifications (or lack thereof) of those available to provide relief; costs involved in the shutdown/startup of machinery in continuous-operation industrial processes; or intermittent and unpredictable work flow not in the control of the employer/employee.

(4) For the purposes of OAR 839-020-0050(1)(a)(B), factors to be considered in determining exceptional and unanticipated circumstances of the work prevent the employee from being relieved of all duty may include, but are not limited to, the following: Unanticipated absences of scheduled employees; unforeseeable equipment failures; emergencies; acts of nature; or imminent and unanticipated adverse weather conditions.

(5) As used in this rule, "work period" means the period between the time the employee begins work and the time the employee ends work, and includes rest periods, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties. Meal periods are not included as part of the work period unless the employee continues to perform duties during the meal period.

(6) The provisions of this section regarding appropriate meal periods and rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.

(7) Pursuant to the provisions of ORS 653.261(5), if an employer agrees, an employee may waive a meal period if all of the following conditions are met:

(a) The employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;

(b) The employee is at least 18 years of age;

(c) The employee voluntarily requests to waive the employee's meal periods no less than seven calendar days after beginning employment;

(d) The employee's request to waive the employee's meal periods is in writing and is signed and dated by both the employee and employer;

(e) The employer retains and keeps available to the commissioner a copy of the employee's request to waive the employee's meal period during the duration of the employee's employment and for no less than six months after the termination date of the employee;

(f) The employee is provided with a reasonable opportunity to consume food during any workshift of six hours or more while continuing to work;

(g) The employee is paid for any and all meal periods in which the employee is not completely relieved of all duty;

(h) The employee is not required to work longer than eight hours without receiving a 30-minute meal period in which the employee is relieved of all duty;

(i) The employer makes and keeps available to the commissioner accurate records of hours worked by each employee which clearly indicate whether or not the employee has received a meal period; and

(j) The employer posts a notice provided by the commissioner regarding rest and meal periods in a conspicuous and accessible place where all employees can view it. Notices that comply with this rule are available upon request from the Bureau of Labor and Industries.

(8) The written request to waive the employee's meal periods referred to in subsection (7)(d) of this rule must be made using a form provided by the commissioner in the language used by the employer to communicate with the employee. Written request forms that comply with this rule are available upon request from the Bureau of Labor and Industries.

(9) Either the employer or employee may revoke the agreement for the employee to waive the employee's meal periods by providing at least seven (7) calendar days written notice to the other.

(10) Notwithstanding the provisions of section (9), an employee who has requested to waive meal periods pursuant to sections (7) and (8) of this rule may request to take a meal period without revoking the agreement to waive such periods. Such requests must be submitted in writing to the employee's employer no less than 24 hours prior to the meal period(s) requested.

(11) An employer may not coerce an employee into waiving a meal period.

(12) An employer will be considered to have coerced an employee into waiving the employee's meal period under the following circumstances:

(a) The employer requests or requires an employee to sign a request to waive meal periods;

(b) An employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;

(c) The employer requests or requires any person, including another employee, to request or require an employee to waive meal periods; or

(d) The employee signs a form requesting to waive meal periods prior to being employed for seven calendar days;

(13) Minors under the age of 18 are not subject to this rule. Rest and meal period requirements for minors under 18 years of age are provided in OAR 839-021-0072.

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 21-2008, f. & cert. ef. 7-8-08

Rule Caption: Amends procedural rules of Wage and Hour Commission and adopts rules pertaining to subpoenas.

Adm. Order No.: BLI 22-2008

Filed with Sec. of State: 7-8-2008

Certified to be Effective: 7-8-08

Notice Publication Date: 6-1-2008

Rules Adopted: 839-022-0100, 839-022-0105, 839-022-0110, 839-022-0115, 839-022-0120, 839-022-0125, 839-022-0130, 839-022-0135, 839-022-0140, 839-022-0145, 839-022-0150, 839-022-0155, 839-022-0160, 839-022-0165

Rules Amended: 839-022-0000, 839-022-0010

Rules Repealed: 839-021-0001, 839-022-0005, 839-022-0020, 839-022-0025, 839-022-0030, 839-022-0035, 839-022-0040, 839-022-0045, 839-022-0050, 839-022-0055, 839-022-0060

Subject: These rule amendments conform the procedural rules of the Wage and Hour Commission to those of the Bureau of Labor and Industries and implement legislation enacted in 2007 authorizing the commission to enforce its investigative subpoenas in state circuit court. The new rules provide subpoena procedures and accountability as required by the legislation.

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

839-022-0000

Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, the Wage and Hour Commission will give notice of the intended action as required in OAR 839-002-0002.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 653.525

Hist.: BL 180, f. & ef. 10-24-75; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 22-2008, f. & cert. ef. 7-8-08

ADMINISTRATIVE RULES

839-022-0010

Model Rules of Practice and Procedure

(1) The Attorney General's Model Rules of Procedure under the Administrative Procedures Act are hereby adopted.

(2) The Model Rules of Procedure shall govern operations of the Contested Case Hearings Unit of the Wage and Hour Commission except to the extent they conflict with or are modified by rules in any division of chapter 839 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR 839, division 50.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 653.530

Hist.: BL 119(Temp), f. & ef. 2-14-72; BL 124, f. 4-27-72, ef. 5-15-72; BL 166, f. 9-3-74, ef. 9-25-74; BL 196, f. & ef. 2-6-77; BL 7-1978, f. & ef. 8-7-78; BL 4-1982, f. & ef. 3-5-82; BL 13-1986, f. & ef. 11-26-86; BL 6-1988, f. & cert. ef. 4-12-88; BL 19-2002, f. 3-28-02, cert. ef. 4-1-02; BL 22-2008, f. & cert. ef. 7-8-08

839-022-0100

Purpose and Scope

(1) ORS 653.530 authorizes the Wage and Hour Commission to conduct investigations in all matters relating to the commission's duties.

(2) While conducting these investigations, ORS 653.530 gives the commission the authority to issue subpoenas ad testificandum and subpoenas duces tecum, administer oaths, obtain evidence and take testimony.

(3) These rules govern the commission's gathering of information through subpoenas or testimony and establish procedures through which a subpoenaed party may object to answering questions or producing any document or other thing subpoenaed.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.525

Hist.: BL 22-2008, f. & cert. ef. 7-8-08

839-022-0105

Definitions

(1) "Commission" means the Wage and Hour Commission.

(2) "Document" means any existing written, printed, typed, or recorded matter of any kind or nature, however produced or reproduced, including but not limited to all mechanical, electronic, sound or video recordings or their transcripts, photographs, electronic files and computer stored data.

(3) "Other thing" means any existing tangible object that is not a "document."

(4) "Party" means any person who has been served by a subpoena under these rules.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(6) "Subpoena ad testificandum" is a subpoena that requires an individual to appear and give testimony under oath.

(7) "Subpoena duces tecum" is a subpoena that requires the production of documents or other things.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.525

Hist.: BL 22-2008, f. & cert. ef. 7-8-08

839-022-0110

Who and What May Be Subpoenaed

The commission may issue subpoenas to persons to compel testimony and the production of documents or other things that are relevant to the commission's lawful investigative purpose and reasonable in scope under matters relating to the duties required under ORS 653.535.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.525

Hist.: BL 22-2008, f. & cert. ef. 7-8-08

839-022-0115

Circumstances Under Which a Subpoena May be Issued

(1) The commission may issue a subpoena ad testificandum to compel an individual to testify under oath when:

(a) The commission determines that the individual is a material witness in an investigation being conducted by the commission under ORS 653.535;

(b) The information sought from the individual is relevant to a lawful investigative purpose and is reasonable in scope; and

(c) The commission has been unable to interview the individual after having made reasonable attempts to do so, or the individual states that he or she will only consent to an interview if first served with a subpoena.

(2) The commission may also issue a subpoena ad testificandum to compel an individual to testify under oath about the contents of documents or other things produced in response to a subpoena duces tecum served on the same individual.

(3) The commission may issue a subpoena duces tecum to compel a person to produce documents or other things when:

(a) The commission determines that the documents or other things are

relevant to the commission's investigation being conducted under ORS 653.535;

(b) The documents or other things sought are relevant to a lawful investigative purpose and are reasonable in scope; and

(c) The commission has made a written request for production of documents or other things and the person to whom the request was made has failed to comply within the time specified by the commission, unless the commission finds a subpoena is necessary to protect the documents and things from destruction.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.525

Hist.: BL 22-2008, f. & cert. ef. 7-8-08

839-022-0120

Who May Issue Subpoenas

The commission or the commission's designees may issue subpoenas.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.525

Hist.: BL 22-2008, f. & cert. ef. 7-8-08

839-022-0125

Subpoena Duces Tecum

(1) A subpoena duces tecum may be issued to any individual who has custody, possession, or control of documents or other things named in the subpoena duces tecum when the conditions set out in 839-022-0115(3) have been met.

(2) A subpoena duces tecum will not require production of documents or other things less than 14 days from the date of service upon the individual required to produce and permit inspection of the documents or other things unless the commission finds a shorter period necessary to protect the documents and other things from destruction or if the commission has an immediate need for the documents or other things being subpoenaed.

(3) The commission may also command the individual to whom a subpoena duces tecum is issued to produce documents and other things by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals. The individual to whom the subpoena is directed complies if the individual produces copies of the specified items in the specified manner and certifies that the copies are true copies of all documents and other things responsive to the subpoena.

(4) The subpoenaed documents and other things must be produced at the location, time, and date required in the subpoena.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.525

Hist.: BL 22-2008, f. & cert. ef. 7-8-08

839-022-0130

Subpoena Ad Testificandum

(1) A subpoena ad testificandum may be issued to any individual when the conditions set out in 839-022-0115(1) or 839-022-0115(2) have been met.

(2) The subpoena ad testificandum must give the individual a reasonable time for preparation and travel to the place of attendance and the place of attendance must be in a suitable place in the vicinity to which testimony is applicable.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.525

Hist.: BL 22-2008, f. & cert. ef. 7-8-08

839-022-0135

Method of Service

(1) Except as noted in subsections (2) and (3) of this rule, subpoenas must be served in person by delivering a copy to the witness personally and, at the same time, giving or offering to the witness the fees to which the individual is entitled for travel to and from the place where the witness is commanded to appear, along with one day's attendance fee. A subpoena may be served by any individual 18 years of age or older.

(2) Subpoenas ad testificandum may be served by mail under the following circumstances:

(a) The commission must have, by personal or telephone contact, confirmed the witness's willingness to appear if subpoenaed and certify this on the return of service;

(b) The commission made arrangements for payment to the witness of fees and mileage satisfactory to the witness and pays those fees and mileage; and

(c) The subpoena is sent by certified mail to the witness more than 10 days before the date set for appearance or production of documents or other things and the commission receives a return receipt signed by the witness more than three days prior to that date.

(3) A subpoena duces tecum that commands production of documents or other things but is not accompanied by a subpoena ad testificandum may be served by mail by mailing the subpoena to the individual required to produce and permit inspection of the documents or other things by first class mail and by certified or registered mail, return receipt requested.

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Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.525
Hist.: BLI 22-2008, f. & cert. ef. 7-8-08

839-022-0140

Fees

All persons subpoenaed by the commission must be paid the mileage and per diem set out in ORS 44.415(2).

Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.525
Hist.: BLI 22-2008, f. & cert. ef. 7-8-08

839-022-0145

Time and Manner of Objecting to Subpoenas

(1) Any person served with an investigative subpoena may object to testifying or providing the documents or other things sought. Grounds for objections include:

(a) The information sought is irrelevant to a lawful investigative purpose;

(b) The information sought is unreasonable in scope;

(c) The witness is ordered to appear to give testimony in a place that is not suitable or not in the vicinity to which the testimony is applicable;

(d) The time and expense involved in copying the documents sought. In order to have this objection considered, a person making this objection must include a written estimate of the time involved and number of copies to be made in order to comply with the subpoena;

(e) Reasonable cause to refuse to comply; and

(f) Any other basis that may be asserted under Oregon law.

(2) Objections to subpoenas must be in writing and must be received by the commission at least seven calendar days before the time that the witness is subpoenaed to testify or provide documents or other things.

(3) If a subpoenaed witness refuses to answer specific questions while giving testimony, the witness must state the reason for his or her objection at the time that the witness refuses to answer the questions.

Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.525
Hist.: BLI 22-2008, f. & cert. ef. 7-8-08

839-022-0150

Response to Objections

(1) The commission will respond in writing to any objections timely received under OAR 839-022-0145(2).

(2) If the objection made is the time and expense involved in copying the documents sought, the commission will provide a check to the person subpoenaed to pay for the estimated time and expense, calculated at the rates set out in OAR 839-030-0010. The commission may provide this check before or at the time the witness is subpoenaed to provide documents or other things.

Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.525
Hist.: BLI 22-2008, f. & cert. ef. 7-8-08

839-022-0155

Method of Taking Testimony

(1) When a witness appears to give testimony in response to a subpoena ad testificandum, an oath or affirmation will be administered to the witness prior to his or her testimony. The oath or affirmation will be administered by an officer authorized to administer oaths in Oregon, generally a notary public.

(2) The witness's testimony will be preserved by an audio or video recording. Upon request, the commission will give the witness a copy of the recording at no cost.

Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.525
Hist.: BLI 22-2008, f. & cert. ef. 7-8-08

839-022-0160

Failure to Appear

If a person served with a subpoena fails to appear and has not filed any prior objections, the commission will conclude that the person has refused, without reasonable cause, to answer any question or to produce any document or other thing.

Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.525
Hist.: BLI 22-2008, f. & cert. ef. 7-8-08

839-022-0165

Enforcement of Subpoena

If a person served with a subpoena refuses, without reasonable cause, to be examined, to answer any question or to produce any document or other thing as required by the subpoena, the commission may petition the circuit court in the county in which the investigation is pending for an order directing the person to show cause why the person has not complied with the subpoena and should not be held in contempt. The commission shall

serve the court's order upon the person in the manner provided by ORCP 55 D.

Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.525
Hist.: BLI 22-2008, f. & cert. ef. 7-8-08

Rule Caption: Amends the prevailing rates of wage for the period beginning July 1, 2008.

Adm. Order No.: BLI 23-2008

Filed with Sec. of State: 7-10-2008

Certified to be Effective: 7-10-08

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, 2008.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2008, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2008, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006).

(b) Amendments/Corrections to July 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 6, 2008).

(c) Amendments/Corrections to July 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 13, 2008).

(d) Amendments/Corrections to July 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 20, 2008).

(e) Amendments/Corrections to July 1, 2008 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 4, 2008).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2008, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

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

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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

Rule Caption: Clarifies requirements for out-of-state attorneys appearing in contested cases and duties of sponsoring attorneys.

Adm. Order No.: BLI 24-2008

Filed with Sec. of State: 7-10-2008

Certified to be Effective: 7-11-08

Notice Publication Date: 12-1-2007

Rules Amended: 839-050-0020

Subject: The proposed rule amendments would clarify statutory and regulatory requirements for out-of-state attorneys to appear in agency contested cases. The proposed rule would define the duty of a sponsoring local attorney to participate meaningfully in the contested case.

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

839-050-0020

Definitions

The following definitions apply, unless the context requires otherwise, to OAR 839-050-0000 through 839-050-0440:

(1) “Administrative law judge” means the commissioner or an individual or a special tribunal designated by the commissioner to preside over any or all aspects of a contested case hearing including motions, oral or written hearings, preparation of the Proposed Order and assistance in preparation of the Final Order. The administrative law judge may or may not be an employee of the Agency.

(2) “Agency” means the Bureau of Labor and Industries and any employee thereof, and includes the bureau when acting as the agent of another governmental entity, but for purposes of these rules does not refer to the administrative law judge or the commissioner.

(3) “Authorized representative” means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer or employee of a governmental agency who has been authorized by the partnership, corporation, association, organized group, or governmental agency to represent that entity during the contested case proceeding.

(4) “Case presenter” means the Agency staff person assigned to present the case for the Agency at the contested case hearing and to handle all related matters, but does not include counsel for the Agency.

(5) “Charging document” means any document issued by the Bureau of Labor and Industries stating that any person, entity, or government agency has violated the laws within this Agency’s jurisdiction and includes, but is not limited to:

- (a) Formal Charges;
- (b) Order of Determination;
- (c) Notice of Intent to Revoke License;
- (d) Notice of Intent to Deny License;
- (e) Notice of Intent to Refuse to Renew a License;
- (f) Notice of Intent to Place Name on List of Ineligibles;
- (g) Notice of Intent to Assess Civil Penalties;
- (h) Notice of Intent to Suspend or Revoke License or to Assess Civil Penalty in Lieu Thereof.

(6) “Claimant” means any individual who has filed a wage claim pursuant to ORS 652 or 653 and who has assigned that claim to the commissioner.

(7) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

(8) “Complainant” means an individual who has, or whose attorney has, filed a complaint pursuant to ORS 658 or 659A, those statutes in ORS 279 enforced by the Bureau of Labor and Industries, and any laws, regulations, or ordinances enforced by the bureau as the agent of another governmental entity.

(9) “Counsel” means an attorney who is in good standing with the Oregon State Bar or an out-of-state attorney who is granted permission by the administrative law judge to appear in the matter pursuant to ORS 9.241 and Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaning-

fully in the case in which the out-of-state attorney appears.

(10) “Counsel for the Agency” means the Attorney General or the Attorney General’s designee.

(11) “Good cause” means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or a circumstance over which the participant had no control. “Good cause” does not include a lack of knowledge of the law, including these rules.

(12) “Hearings Unit” means the section of the Bureau of Labor and Industries handling all aspects of contested case hearings. The address for the Unit is: Bureau of Labor and Industries, Hearings Unit, 1045 State Office Building, 800 N.E. Oregon Street, Portland, OR 97232-2162.

(13) “Issuance” means the act of sending out a document from the Hearings Unit. For purposes of these rules, the date of issuance is the date, as noted on the document, that the document was sent out from the Hearings Unit.

(14) “Participant” means any party, including any person or entity granted party status under OAR 137-003-0005, or the Agency.

(15) “Party” means:

(a) Any person, government agency, or entity upon whom a charging document has been served;

(b) Any person, government agency, or entity that has been granted party or limited party status under OAR 137-003-0005.

(16) “Service” means, for purposes of these rules, the method of forwarding documents and includes personal service, registered or certified mail, hand delivery or regular U.S. mail.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0025; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 24-2008, f. 7-10-08, cert. ef. 7-11-08

Construction Contractors Board Chapter 812

Rule Caption: Adopt maintenance schedule rule, clarify RMI experience and \$150 material supplier fee, correct cite references and housekeeping.

Adm. Order No.: CCB 10-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 812-001-0240

Rules Amended: 812-003-0175, 812-004-0110, 812-004-0260, 812-004-0320, 812-004-0550, 812-005-0130, 812-005-0500, 812-006-0450

Subject: 812-001-0240 adopt recommended maintenance schedule to comply with ORS 701.335 for new residential construction. The rule specifies the minimum information that a contractor must provide to a first purchaser or owner of new residential structure or dwelling.

812-003-0175, 812-004-0110, 812-006-0260, 812-004-0550, 812-005-0130 & 812-005-0500 are amended to correct cite references and housekeeping.

812-004-0320 is amended to expand conditions where a complainant may file a second complaint on the same allegations after the first complaint was closed and to clarify that the \$150 limit on material supplier complaints does not include the processing fee.

812-006-0450 is amended to clarify responsible managing individual (RMI) experience.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0240

Maintenance Schedules

(1) A contractor that constructs a new residential structure or zero-lot-line dwelling shall provide a maintenance schedule to the first purchaser or owner of the structure or dwelling. The maintenance schedule will recommend periodic steps that the purchaser or owner should take to prevent moisture intrusion or water damage to the structure or dwelling. The minimum information contained in the maintenance schedule will consist of the information listed below in section (4).

(2) “Moisture intrusion” and “water damage” are defined as follows:

(a) “Moisture intrusion” means water, whether liquid, frozen, condensed or vaporized, that penetrates into a structure or behind the outside cladding of a structure.

(b) “Water damage” means damage or harm caused by moisture intrusion that reduces the value or usefulness of a structure.

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(3) Moisture intrusion and water damage may occur, for example, from the following:

- (a) Missing or loose roofing materials or flashing;
 - (b) Window sills or door frames without adequate caulking or weather-stripping;
 - (c) Lack of caulking in siding, mortar in masonry or grout in exterior ceramic tile installations;
 - (d) Degraded paint on exterior siding or surfaces;
 - (e) Overflowing or clogged gutters;
 - (f) Gutter drains or downspouts that are not a sufficient distance from the structure;
 - (g) Improper drainage slope next to foundation;
 - (h) Plant materials too close to the structure or foundation;
 - (i) Sprinklers that overspray onto the structure or foundation;
 - (j) Non-working interior ventilation systems.
- (4) The recommended maintenance schedule for new residential structures and dwellings, to prevent moisture intrusion and water damage, is as follows:

- (a) At least once a year:
 - (A) Check roof for damaged, loose or missing shingles. Check flashing around roof stacks, vents, skylights, and chimneys and in roof valleys for missing or loose flashing. Repair or replace if necessary.
 - (B) Check for water stains in the roof of the attic and in the exterior overhangs or soffits. If water stains are present, locate and repair the cause of moisture intrusion.
 - (C) Check and repair missing mortar in exterior masonry.
 - (D) Check painted surfaces for cracking, peeling or fading. Repaint if necessary.
 - (E) Inspect gutters and downspouts for leaks. Repair if necessary. Check alignment of gutters, downspouts and splash blocks to ensure that water is properly diverted away from the structure and foundation. Repair if necessary.
 - (F) Inspect gutters for debris blockage. Remove debris (for example, tree needles and leaves) from downspouts and gutters.
 - (G) Check soil around foundation to make sure that it slopes in such a way that water can flow away from the foundation. Fill soil in any areas that have settled around the foundation.
 - (H) Trim back tree branches, shrubs and other plants to make sure they are not in contact with the structure.
 - (I) Check landscaping sprinklers to make sure that they are not set so that they will soak siding or form puddles near the foundation. Adjust if necessary.
- (b) At least twice a year, check and repair missing, cracked or peeling caulking or weather-stripping around window sills, door frames and in siding gaps.
- (c) At least once every two months, check to make sure that interior mechanical ventilation systems (such as bathroom, kitchen and utility room vent fans) are in good working order. Repair if necessary.
- (5) Signs of water damage may include, but are not limited to, dampness, staining, mildewing (blackened surfaces with musty smell) and softness in wood members (possible sign of dry rot).
- (6) If water damage is discovered, investigation should be made into the source of the water damage. Steps should be taken to repair or replace building components or materials that allowed moisture intrusion leading to the water damage. Additional steps may need to be taken depending on the extent of the water damage.

- (7) The maintenance schedule in section (4) contains the minimum information that a contractor of a new residential structure or zero-lot-line dwelling must provide. A contractor may offer a maintenance schedule with additional information, recognizing the uniqueness of each structure and its material components. A contractor may use any form or layout for its maintenance schedule, provided that it contains the information in section (4).
- (8) The contractor of a new residential structure or zero-lot-line dwelling shall provide a copy of its maintenance schedule to the first purchaser or owner no later than 60 days after substantial completion of the structure or dwelling, or occupancy of the structure or dwelling, whichever occurs later.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.335

Hist.: CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

812-003-0175

Increased Bond, Letter of Credit or Cash Deposit Requirement, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond, letter of credit or cash deposit in an amount up to five times the amount required for the category of license under OAR 812-003-0170 or 812-003-0171, if:

- (a) The business has unpaid debts under a final order or arbitration award of the board;

(b) An owner or officer of the business has unpaid debts under a final order or arbitration award of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order or arbitration award of the board and such debt remains unpaid.

(2) For purposes of this rule, "owner" means an "owner" as defined in ORS 701.094 and OAR 812-002-0537.

(3) For purposes of this rule, "officer" means an "officer" as defined in ORS 701.005(11).

(4) Debts due under a final order or arbitration award of the board include amounts not paid by a surety or financial institution on complaints.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.068 & 701.088

Hist.: CCB 4-2006(Temp), f. & cert. ef. 3-9-06 thru 9-5-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

812-004-0110

Complaint Processing Fee; Waiver of Fee

(1) The complaint processing fee authorized under ORS 701.133 is \$50 for a complaint filed under 701.145. There is no complaint processing fee for a complaint filed under 701.146.

(2) The agency must collect the processing fee under OAR 812-004-0400.

(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:

- (a) The complainant is an individual;
- (b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and
- (c) The complainant's gross income does not exceed the 2007 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 73, No. 15, January 23, 2008, pp. 3971-3972.

(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the complainant pay a complaint processing fee of \$97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.146 & 701.147

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

812-004-0260

Order Closing a Complaint

(1) If the agency closes a complaint because the complainant did not act in response to a request from the agency, the closure of the complaint is an order that is not an order in a contested case. An order to close a complaint is subject to a motion for reconsideration under ORS 183.484 and OAR 137-004-0080 and an appeal for judicial review under ORS 183.484.

(2) The agency may close a complaint under this rule only if it complies with the following:

(a) The agency must include notice in its request to the complainant that failure to act as requested may result in closure of the complaint and that closure of the complaint will prevent access to the bond, letter of credit or cash deposit.

(b) The agency may not close the complaint sooner than 14 days after giving the notice required in subsection (2)(a) of this rule.

(c) The agency must notify the parties to the complaint that the complaint is closed and cite the statutes and rules under which the order may be appealed.

(3) The agency may reopen a complaint closed under this rule if the record of the complaint contains evidence that shows that the reason the complainant did not act as requested by the agency was due to excusable neglect by the complainant. The agency may reopen the complaint:

- (a) In response to a motion for reconsideration; or
- (b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the complaint.

(4) At the agency's discretion, the agency may refer a complaint to the Office of Administrative Hearings for a contested case hearing on whether closure of the complaint under this rule is proper.

(5) A party must file a motion for reconsideration of an order closing a complaint under this rule before seeking judicial review of the order.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.480, 701.140, 701.145 & 701.146

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

812-004-0320

Jurisdictional Requirements

(1) A complaint must be of a type described under ORS 701.140.

(2) A complaint must be filed with the agency within the time allowed under ORS 701.143.

(3) A complaint will be processed only against a licensed entity.

Whether a respondent is licensed for purposes of this section must be determined as follows:

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. Damages will be awarded only for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which the respondent was licensed.

(4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.026 in order to perform the work; and

(B) The complainant files a complaint arising out of a contract to construct the work at issue and the complaint is for unpaid labor or materials furnished under the contract.

(b) As used in section (4) of this rule, "properly licensed" means the complainant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the complaint;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to the complainant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on the complainant's license.

(5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;

(c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or

(d) A real estate purchase conditioned upon an inspection report or repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be dismissed under this section (7) if the previously filed complaint was:

(a) Withdrawn before the on-site meeting;

(b) Closed without a determination on the merits before the on-site meeting;

(c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110.

(d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(e) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

(9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabri-

cated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount, not including the processing fee required by 812-004-0110.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

812-004-0550

Proposed Default Order to Dismiss, Other Resolution of Complaint by Proposed Default Order

(1) The agency may issue a proposed default order proposing dismissal of a complaint if the evidence in the complaint record persuades the agency that one of the following grounds for dismissal exists:

(a) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140.

(b) The complaint was not filed within the time limit specified under ORS 701.143.

(c) The complainant did not permit the respondent to comply with agency recommendations under ORS 701.145(3)(d).

(d) The complaint must be dismissed for lack of jurisdiction under OAR 812-004-0320(4) or (5).

(e) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the complainant is less than an amount due to the respondent from the complainant under the terms of the contract.

(f) The complainant contends that the respondent did not fulfill the terms of a settlement that resolved the complaint but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a complaint if the agency investigates the complaint and finds that the record of the complaint supports dismissal under OAR 812-004-0535.

(3) If the complainant makes a timely request for a hearing after the agency issued a proposed default order under section (1) or (2) of this rule, the agency may:

(a) Refer the complaint for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the complainant file a statement of damages stating an amount the complainant alleges the respondent owes the complainant and refer the complaint for arbitration or a contested case hearing to determine if the complaint should be dismissed and if not, the validity of the complaint and whether the amount alleged, or some lesser amount is proper.

(4) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.133 & 701.145

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

812-005-0130

Hearing

If the agency issues a notice of intent to take an action and an answer or a written request for hearing is timely received, the agency will set an administrative hearing to determine whether the respondent has violated any provision of ORS Chapter 701 or of these rules, and if so, the duration of any suspension and the amount of any civil penalty to be assessed.

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

Stats. Implemented: ORS 701.098 & 701.102

Hist.: 1BB 7-1980(Temp), f. & ef. 11-4-80; 1BB 8-1980, f. & ef. 12-9-80; 1BB 2-1981, f. & ef. 6-4-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-11-080; 1BB 4-1985, f. & ef. 12-8-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 6-1997, f. & cert. ef. 11-26-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; Renumbered from 812-005-0000(1)(d), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

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812-005-0500

Form of Complaint Regarding Public Contracts

(1) A person providing information to the agency must submit the information on a form provided by the agency if the information is submitted for purposes of:

(a) ORS 701.227 alleging that a contractor failed to pay a person who supplied labor or materials within 60 days after the date when the contractor received payment; or

(b) ORS 279C.590, in accordance with the subcontractor disclosure requirements pursuant to 279C.370.

(2) The agency may require the use of the most recent version of a form submitted under section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.098, 701.235 & 701.227

Stats. Implemented: ORS 701.098, 701.227 & 279C.590

Hist.: CCB 5-2000(Temp), f. & cert. ef. 5-9-00 thru 11-4-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2002, f. & cert. ef. 3-1-02; Renumbered from 812-005-0003, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

812-006-0450

Experience

In order for a responsible managing individual to demonstrate experience under ORS 701.005(15)(c)(B):

(1) The individual must be listed on the agency's license records before July 1, 2000, as having been a sole proprietor, partner, venturer, member, corporate officer, trustee, or responsible managing individual of a business licensed under ORS Chapter 701 before July 1, 2000;

(2)(a) The license of the business described in section (1) of this rule has not lapsed, or if lapsed, has lapsed for not more than the 24 month period prior to the date of the application; or

(b)(A) If the individual is listed on multiple license records as a sole proprietor, partner, venturer, member, corporate officer, trustee or responsible managing individual, the licensed business with which the individual is currently associated must not have lapsed for more than the 24-month period prior to the date of the application; and

(B) The individual must have been similarly and continuously associated with one or more licensed contractors during the time period beginning before July 1, 2000, until the date of the application.

(3) The individual must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or responsible managing individual of the business described in section (1) or (2)(b) of this rule within the 24 month period prior to date of the application.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.005 & 701.122

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2001(Temp), f. & cert. ef. 5-18-01 thru 11-13-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02, cert. ef. 7-1-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; Renumbered from 812-006-0020, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08

Rule Caption: Clarifying coverage of residential and commercial surety bonds.

Adm. Order No.: CCB 11-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Amended: 812-003-0150, 812-003-0152, 812-003-0153, 812-004-0600

Subject: OAR 812-003-0150 is amended to clarify its application to bonds issued before the issuance of residential or commercial surety bonds.

OAR 812-003-0152 is amended to clarify that residential bonds are available only for payment of Board orders relating to residential or small commercial structures or developments.

OAR 812-003-0153 is amended to clarify that residential bonds are available only for payment of Board orders relating to small or large commercial structures or developments.

OAR 812-004-0600 is amended to fill in the statutory scheme clarifying that residential surety bonds pay only for complaints arising from the construction of residential or small commercial structures or developments and that commercial surety bonds pay only for complaints arising from the construction of large or small commercial structures or developments.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-003-0150

Bonds, Generally

(1) A properly executed bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(b) If issued before July 1, 2008, include the following:

"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "contractor" as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 701, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Construction Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

This bond shall not be valid for purposes of licensing in accordance with ORS chapter 701 unless filed with the Construction Contractors Board within sixty (60) days of the date shown below."

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310, 701.085 (2005) & 701.235

Stats. Implemented: ORS 701.085 (2005); 701.068 & 701.088

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 11-2008, f. 6-30-08, cert. ef. 7-1-08

812-003-0152

Residential Bonds Generally

(1) For all new applications or renewals for residential contractor endorsements on or after July 1, 2008, a properly executed residential bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Residential Surety Bond" dated November 1, 2007.

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 (2005) or 701.068 or 701.088 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.

(4) A residential bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.068, & 701.081

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 11-2008, f. 6-30-08, cert. ef. 7-1-08

812-003-0153

Commercial Bonds Generally

(1) For all new applications or renewals for commercial contractor endorsements on or after July 1, 2008, a properly executed commercial bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Commercial Surety Bond" dated November 1, 2007.

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS

ADMINISTRATIVE RULES

701.085 (2005) or 701.068 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.

(4) A commercial bond is available only for payments ordered by the agency involving small or large commercial structures or for the development of property zoned or intended for use compatible with large or small commercial structures.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.068 & 701.084

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 11-2008, f. 6-30-08, cert. ef. 7-1-08

812-004-0600

Payment From Surety Bond, Letter of Credit or Cash Deposit

(1) The agency may notify the surety company or financial institution of complaints pending.

(2) The agency must notify the surety company or financial institution of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint is ready for payment when all of the following have occurred:

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award;

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and

(d) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject complaint.

(3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, letter of credit or cash deposit was in effect when the work period began, payment must be made from that surety bond, letter of credit or cash deposit.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period.

(c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job.

(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond, letter of credit or cash deposit is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond, letter of credit or cash deposit up to the amount in effect at the time the contract was entered into.

(5) If the respondent maintains multiple surety bonds, letters of credit or cash deposits, the following apply:

(a) If multiple surety bonds, letters of credit or cash deposits were in effect when the work period began, payment must be made from all surety bonds, letters of credit or cash deposits in effect.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began, but multiple surety bonds, letters of credit or cash deposits subsequently became effective during the work period of the contract and the effective dates of the surety bonds, letters of credit or cash deposits are substantially the same, payment must be made from multiple surety bonds, letters of credit or cash deposits.

(c) Payment to satisfy a complaint made under section (5) of this rule from a surety bond, letter of credit or cash deposit must be in the same proportion that the penal sum of the surety bond, letter of credit or cash deposit bears to the total of the penal sums of the multiple surety bonds, letters of credit or cash deposits.

(d) For purposes of this rule, where the contractor holds an endorsement as a residential or commercial contractor, "multiple surety bonds" refers to either multiple residential surety bonds or multiple commercial surety bonds. "Multiple surety bonds" does not mean a combination of residential surety bonds and commercial surety bonds.

(6) If the contractor holds a residential surety bond, that bond is available only for payments ordered by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

(7) If the contractor holds a commercial surety bond, that bond is available only for payments ordered by the agency involving small or large commercial structures or for development of property zoned or intended for use compatible with small or large commercial structures.

(8) If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (3) of this rule or multiple surety bonds, letters of credit or cash deposits under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, letters of credit or cash deposits payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(9) The full penal sum of a bond, letter of credit or cash deposit must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond, letter of credit or cash deposit amount required under OAR 812-003-0170 or 812-003-0171.

(10) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds, letter of credit or cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

(11) A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

(12) Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150, 701.081, 701.084 & 701.088

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 11-2008, f. 6-30-08, cert. ef. 7-1-08

Rule Caption: Modifying requirements for license application information — corporate officer identifiers.

Adm. Order No.: CCB 12-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Amended: 812-003-0260

Subject: OAR 812-003-0260 is amended to correct a previous amendment to the rule. The previous amendment neglected to consider that the name and address of corporate officers is required by statute, namely ORS 701.046, and cannot be removed by rule. The exemption for reporting the driver's license number and date of birth for corporate officers of small-, mid-, large- and mega-cap companies is retained.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-003-0260

Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name and address (which may be the business address) of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust;

ADMINISTRATIVE RULES

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(d) Date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) For corporations with a market capitalization of less than \$300 million, all corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(e) Social security number of the owner of a sole proprietorship or partners, if partners are human beings, in a general partnership;

(f) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(g) License endorsement sought, as provided for under OAR 812-003-0131;

(h) The identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.122 or is otherwise exempt under Division 6 of these rules;

(i) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(j) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(k) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) If unsatisfied on the date of application, a copy of a final judgment by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body;

(B) If unsatisfied on the date of application, a copy of a final order by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or public body;

(C) If pending on the date of application, a copy of a court complaint filed in any state that alleges that the person owes money to another person or public body; or

(D) If pending on the date of application, a copy of an administrative notice of action issued in any state that alleges that the person owes money to another person or public body.

(I) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) A copy of a judgment of conviction for a crime listed in ORS 701.098(1)(h), entered within five years preceding the application date; or

(B) A copy of an indictment for a crime listed in ORS 701.098(1)(h), entered within five years preceding the application date.

(C) In addition to documents required in paragraphs (1)(I)(A) and (B) of this section, copies of police reports, parole or probation reports indicating parole or probation officer's name and phone number, and letters of reference.

(m) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee;

(n) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct; and

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond, letter of credit or assignment of savings as required under OAR 812-003-0152, 812-003-0153, or 812-003-0155; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.050, 701.056, 701.068, 701.073, 701.081, 701.088, 701.122

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2008, f. & cert. ef. 3-24-08; CCB 8-2008, f. 4-28-08, cert. ef. 7-1-08; CCB 12-2008, f. 6-30-08, cert. ef. 7-1-08

Rule Caption: Establishes penalty for failing to provide a written contract with contractual terms provided by 701.305 and establishes unfit or not fit for licensure.

Adm. Order No.: CCB 13-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 812-005-0280

Rules Amended: 812-005-0800

Subject: 812-005-0280 is adopted to implement ORS 701.098(2) and 701.102. These provisions allow the board to develop rules to sanction a contractor if the contractor is "unfit" or "not fit" for licensure and to define the meaning of these terms. The rule addresses two problems: (1) where license applicants fail to pay obligations that arose in a company for which they were the owner or officer; or (2) where there is poorly performed construction that causes consumer harm. The rule reaches matters not expressly covered by the "construction debt" statutes. Although CCB may issue an emergency suspension for nonpayment of "construction debts" (see ORS 701.098(4)(a)(E)), there are other unpaid obligations that also evidence a lack of financial responsibility. The rule adopts express standards to discipline a contractor that performs substandard work that causes harm to consumers. The rule adopts the state building codes (especially the structural code) or accepted building standards as the measure of the work quality.

812-005-0800 is amended to establish penalties for violation of ORS 701.305 and OAR 812-012-0110 for failing to provide a written contract with contractual terms provided by ORS 701.305 and OAR 812-012-0110.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-005-0280

Unfit or Not Fit for Licensure

(1) Pursuant to ORS 701.098(2) and 701.102(2)(d), the agency may revoke, suspend, or refuse to issue a license if the applicant, licensee, or an owner, officer or responsible managing individual of the applicant or licensee demonstrates a lack of financial responsibility. Lack of financial responsibility is evidenced by failure to pay a final order of the board, issued under 701.145 or 701.146, where the final order exceeds the amount of the applicable bond and the final order was issued against:

(a) The applicant or licensee; or

(b) A business in which the owner, officer or responsible managing individual of the applicant or licensee is, or was, an owner, officer or responsible managing individual during the work period in which the business' obligation giving rise to the final order arose or was incurred.

ADMINISTRATIVE RULES

(2) As used in subsection (1) of this rule, "officer" includes any person listed in ORS 701.005(11) or OAR 812-002-0533.

(3) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to reissue a license if a contractor engages in conduct that harms a consumer by: Arranging for or undertaking work as a contractor that:

(a) Is performed in a manner not in accordance with state building codes or accepted building standards demonstrating negligent or improper work;

(b) The work causes damage to the consumer or to the consumer's property; and

(c) The work is significantly substandard or is part of a pattern of substandard work performed by the contractor.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098 & 701.102

Hist.: CCB 13-2008, f. 6-30-08, cert. ef. 7-1-08

812-005-0800

Schedule of Penalties

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

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

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

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

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

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

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

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

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

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

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

(11) Failure to use a written contract as required by ORS 701.305, \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.330, failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

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

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

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established

pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

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

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

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

(17) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

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

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

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

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

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

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

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

(e) Failing to comply with the posting requirements of ORS 279C.840: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

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

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

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

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

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

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

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

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

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

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

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

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

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

ADMINISTRATIVE RULES

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

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

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

(34) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110:

(a) On or before December 31, 2008: first offense, a warning letter; second offense, \$500 civil penalty; and third offense, up to \$5,000 civil penalty.

(b) After December 31, 2008: first offense, \$500 civil penalty; second offense, \$2,000 civil penalty; and third offense, up to \$5,000 civil penalty.

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

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.041, 701.098, 701.106, 701.227, 701.315, 701.305, 701.330, 701.345 & 701.992

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

Rule Caption: Home Inspector Standards of Behavior.

Adm. Order No.: CCB 14-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Amended: 812-008-0201

Subject: 812-008-0201 is amended to make it clear that licensed home inspector businesses can advertise without violating the standards of behavior; makes it clear that home inspectors may discount, credit or add-on services without violating the standards of behavior; and otherwise clarify restrictions on receiving financial consideration.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-008-0201

Standards of Behavior

(1) An Oregon certified home inspector shall not:

(a) Engage in dishonest or fraudulent conduct or undertake activities that are injurious to the welfare of the public, which result in injury or damage to another person.

(b) Disclose any information about the results of an inspection without the approval of the client for whom the inspection was undertaken.

(c) Accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.

(d) Directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers or similar arrangements. This paragraph is not intended to prohibit any discount, credit or add-on service made directly to an inspector's client.

(e) Accept financial or other consideration, such as material or equipment, from suppliers for suggesting the use of, or promoting a specific product in the course of performing an inspection.

(f) Accept compensation, directly or indirectly, for recommending contractors, services, or products to inspection clients or other parties having an interest in inspected properties.

(g) Inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

(h) Express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

(i) Allow his or her interest in any business to affect the quality or results of inspection work that the Oregon certified home inspector may be called upon to undertake.

(j) Misrepresent any matters to the public.

(2) Opinions expressed by Oregon certified home inspectors shall only be based on their education, experience, and physical evidence observed by the inspector.

(3) Before the execution of a contract to undertake a home inspection, an Oregon certified home inspector shall disclose to the client any interest in a business that may affect the client.

(4) Nothing in OAR 812-008-0201 shall prohibit a business offering home inspection services from advertising services or for the purpose of recruiting employees and personnel. All such advertisements shall not be misleading or deceptive. A business shall not advertise home inspection services unless the business is properly licensed.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; Renumbered from 812-008-0080, CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; CCB 14-2008, f. 6-30-08, cert. ef. 7-1-08

Department of Administrative Services

Chapter 125

Rule Caption: Rules for Statewide Facility Planning Process.

Adm. Order No.: DAS 4-2008

Filed with Sec. of State: 6-17-2008

Certified to be Effective: 6-17-08

Notice Publication Date: 5-1-2008

Rules Adopted: 125-125-0500, 125-125-0600

Rules Amended: 125-125-0050, 125-125-0100, 125-125-0150, 125-125-0250, 125-125-0300, 125-125-0350, 125-125-0400

Subject: This rule provides a process for developing, planning and evaluating projects engaged in capital construction on state owned property within the City of Salem. Amendments are primarily house-keeping changes to improve clarity and update references. OAR 125-125-0500 adopts the Area Plan Review, Adoption, Amendment, and Repeal Process.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-125-0050

Purpose, Application, and Authority

These rules are adopted under ORS 276.227. They set forth the statewide facility planning process for state agencies and the duties of the Board, which assists the Department with the planning process. State agencies other than institutions of higher education are required to provide information about their facilities and projects to the Department. Additionally, they implement a planning and review process for facilities and projects within the area described in ORS 276.028.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0100

Definitions

As used in these rules, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Area Plan" means a plan for development in one of the specified geographical areas described in ORS 276.028.

(2) "Biennial Leasing Plan" means a summary of all continuing leases or changes in leasing activity proposed for the coming biennium. This will summarize agency leasing activities or requests and provide a context for individual leasing plans.

(3) "Board" means the Capital Projects Advisory Board appointed under ORS 276.227(3), which is advisory to the Director of the Department.

(4) "Building Maintenance Plan" means a plan to be completed by an agency that owns a building valued at \$1 million or greater.

(5) "Committee" means the Capitol Mall Project Review Committee, which reviews projects on the Capitol Mall for compliance with the Capitol Mall Area Plan standards and policy.

(6) "Department" means the Department of Administrative Services.

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(7) "Director" means the Director of the Department of Administrative Services.

(8) "Leasing Project Plan" means a proposed new lease, business case and cost benefit analysis completed by state agencies that lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more.

(9) "Construction Project Plan" means a plan to be completed for each major capital construction project of \$500,000 or more that a state agency is anticipating within the next three biennia which is either new construction or adds area to an existing facility.

(10) "Space Needs Plan" means a plan to be completed by state agencies that own or plan to build or buy a building with 10,000 or more square feet; lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more; plan to seek any legislative or Emergency Board approval for a major construction, acquisition or leasing project; or plan to seek planning funds for a project that is anticipated to cost more than \$500,000 over the next three biennia. The Space Needs Plan includes the Biennial Leasing Plan.

(11) "Statewide Program" means a program of the Facilities Division of the Department of Administrative Services that implements OAR 125-125-0050 to 125-125-0600.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0150

Statewide Facility Planning Process

(1) The statewide facility planning process provides a means of evaluating if state facilities are planned, financed, acquired, constructed, managed, and maintained in a manner that maximizes and protects this investment.

(2) The described budget review process program does not apply to institutions of higher education, community colleges, Oregon Health Sciences University, SAIF Corporation, Lottery, Secretary of State, Treasurer's Office, or to the Legislative or Judicial branches.

(3) The Department shall implement and maintain a planning process. This process shall coordinate state facilities' data, standards, maintenance planning, leasing planning, capital project planning, Salem Area Projects planning and Capitol Mall Area Projects Planning. The Department shall use the Board to assist in the review of agency plans and other associated documents and to advise the Director.

(4) The Statewide Facilities Program shall develop the State Facilities Planning Process Manual. The manual shall provide definitions, examples, and detailed descriptions of required reports to aid agencies in supplying information to the Statewide Program. The manual shall be reviewed biennially before the budget process begins and updated, if needed.

(5) Following the guidelines contained in the State Facilities Planning Process Manual, Agencies shall submit a State Facility Plan through the statewide facilities coordinator if it meets one or more of the following criteria:

(a) The agency owns buildings or plans to build or buy a building of 10,000 or more square feet;

(b) The agency plans a major re-organization;

(c) The agency proposes to enter into a lease of 10,000 or more square feet of conditioned space for a period of ten years or more;

(d) The agency proposes to request a budget to construct a major capital project;

(e) The agency plans to seek a legislative or Emergency Board approval for a major construction or acquisition project;

(f) The agency plans to seek planning funds for a major construction or acquisition project for which the total cost will be \$500,000 or more.

(6) To best coordinate and distribute the facilities data, the Statewide Program shall maintain a State Facility Inventory. The inventory shall be a database of state agency facilities covered under this rule and valued over \$1 million, which shall be updated biennially by agencies. The inventory shall include basic information on these buildings, such as the age, roof replacement schedule, deferred maintenance plan, etc. The data shall be used to make effective decisions on capital projects, space needs, and maintenance of the buildings.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0250

Procedure for Submitting Reports for Review

(1) Each state agency shall report to the Board by July 31 of even-numbered years long-range facility plans and funding strategies that reflect changes in technology and priorities. The reports shall include a Space

Needs Plan (including the Biennial Leasing Plan), a Construction or Lease Project Plan, and a Building Maintenance Needs Plan, if applicable.

(2) The Board shall review the information submitted and presented under section (1) of this rule and make recommendations to the Director by September 1 of even-number years related to long-range plans, the condition of facilities, maintenance schedules, funding strategies and options for new facilities.

(3) The statewide facilities coordinator shall request updated plans from agencies biennially and establish a submittal schedule. This schedule shall include the report due dates and presentation date for each agency to appear before the Board.

(4) The Agency shall provide one electronic copy to the statewide facilities coordinator no later than the due date stated for the agency on the CPAB Reporting schedule.

(5) If an Agency has project(s) that require review under OAR 125-125-0350 Salem Area Project Review, then a supplemental listing and description of those projects should be prepared and submitted with the other required materials.

(6) The statewide facilities coordinator will provide a substantive analysis of the plans, including review for completeness and responsiveness to issues and provide the information to the Board. The coordinator may return a list of questions to the agency or recommended changes.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0300

Procedure for Board Review

(1) Following review of the information by the Department, the agency shall present its plans before the Board, for the purpose of determining if the projects are compatible with the criteria established in the State Facilities Planning Process Manual. The Board may pose further questions to the agency or determine if additional action is required and postpone acceptance or comment on the plans.

(2) In order to grant acceptance or favorable comment on the plans, the Board must find the project is compatible with the criteria listed in the State Facilities Planning Process Manual and the Budget Instructions.

(3) No agency subject to this rule shall seek Legislative or Emergency Board approval of projects meeting the criteria of 125-125-0150 without first having obtained review of the project by the Board.

(4) The Board shall accept the report after consideration of agency submissions, testimony, and public testimony, if any. Their comments shall be kept in the formal meeting minutes and provided to the Director and budget analysts for inclusion in the agency's budget package

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0350

Salem Area Project Review

(1) The Department shall conduct a special review process for projects on state-owned property, located within the boundaries of the city of Salem.

(2) This review process applies to any state officer, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.028.

(3) The Department shall use the Board to assist with this review for major projects or those requiring public input. Reviews will be based upon the development standards and policies contained in the Area Plans previously developed by the Capitol Planning Commission or as modified by the Department after review by the Board.

(4) Area Plans cover the following state properties: Capitol Mall Area; Airport Road Area; Hillcrest Area; Southeast Salem Area (formerly known as Oregon State Corrections Area); State Fair and Exposition Center Area; Oregon State Hospital and Penitentiary Properties Area; Oregon School for the Blind Area; and, Oregon School for the Deaf Area.

(5) For the purposes of the review required under this section, project means expenditures for capital construction or for capital improvement. A project does not include the following:

(a) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(b) Repair or maintenance that does not substantially change the existing use of space, that does not add additional square footage to a building, and that does not change exterior building design;

(c) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(6) A minor improvement to the building or grounds means an improvement that does not fall within the exceptions under OAR 125-125-0350 and impacts the appearance of the building grounds or exterior.

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(7) A major improvement to the building or grounds, addition, or new construction means a total rework of the building exterior or landscaping, an addition to the building, or construction of a new building.

(8) No state agency may expend funds for any project subject to the requirements of this section unless the project has been reviewed and approved through the described review process. An agency is not precluded by this rule from collecting management data for the preparation of a project proposal.

(9) An agency seeking project review will submit a written request to the Statewide Facilities Program not less than 21 days before the next scheduled meeting of the Board. The Department shall provide a standard form for agencies to use to request project review. The Department may waive the notification period for good cause. The requesting agency shall provide 10 copies of materials submitted.

(10) Projects for minor improvements to the building or grounds shall include:

- (a) A completed project application form;
- (b) A written description of the project;
- (c) Site, architectural, and landscaping plans (if applicable) for the project;

(d) Sufficient information to demonstrate compliance with the applicable Area Plan; and

(e) Sufficient information to demonstrate compliance with local zoning and other applicable standards.

(11) Projects for major improvements to buildings or grounds, additions, or new construction shall include an initial submittal including:

- (a) A completed project application form;
- (b) A written description of the project;
- (c) Preliminary site, architectural, and landscaping plans (if applicable) for the project;

(d) A description of the process planned to be used to ensure compliance with the Area Plan and local zoning and other applicable standards; and

(e) A description of any planned meetings with neighborhood groups or other interested members of the public.

(12) Once the design of the major project is completed, the state agency shall make a final project submittal, which shall include:

- (a) Site, architectural, and landscaping plans (if applicable) at a design development stage or later;

(b) Sufficient information to demonstrate compliance with the applicable Area Plan;

(c) Sufficient information to demonstrate compliance with local zoning and other applicable standards; and

(d) A record of meetings with neighborhood groups or other interested members of the public.

(13) For new construction projects, facility siting review will be required before starting design and making the required submittals under OAR 125-125-0350(11). For siting review, the following shall be provided:

- (a) A completed site need and description form;
- (b) A written description of the proposed improvements that will be constructed;

(c) A vicinity map showing the proposed site and its proximity to major streets and surrounding functions;

(d) A topographic map of the proposed site indicating the boundaries for proposed improvements, prominent features, surrounding buildings, and other related information to provide a context for the project;

(e) Preliminary information about whether sewer, water, streets, and other infrastructure is available to service the proposed use;

(f) A preliminary assessment of any wetland, flood plain, environmental, or archeological issues on the site and whether development would likely impact them;

(g) Sufficient information to demonstrate compliance with local zoning, comprehensive plan, and other related land use standards.

(h) If the proposed site is on state-owned property, sufficient information to demonstrate that the proposed use is in compliance with the applicable Area Plan; and

(i) If the proposed site is to be acquired, an assessment of what state-owned properties were considered and why none were acceptable, plus information required by the Facility Siting Policy 125-6-115.

(14) If the project is within the areas included in the Capitol Mall Area Plan, the required submittals shall also include the conclusions from the Capitol Mall Project Review Committee according to the requirements of OAR 125-125-0450.

(15) The Board shall review the material submitted by the agency and acknowledge if the applicable requirements were met. The Board shall also provide an opportunity for interested members of the public to comment about the project's compliance with the Area Plan. The Board will then pass the record of the project review to the agency and the Director.

Stat. Auth.: ORS 276.227
Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0400

Area Plan Update Responsibilities

(1) Each agency owning property in the Salem area shall be responsible for helping maintain an Area Plan for property it owns.

(2) The Department shall develop a standard template for Area Plans, which shall structure any modifications to existing plans and include content areas specified under OAR 110-010-0034. The Department shall also develop and maintain a coordination plan that addresses the interrelationship among the different Area Plans and the state's presence in the City of Salem.

(3) The Department shall develop and maintain a review schedule for the Area Plans and a process for coordinating any required changes with the affected agencies and the City of Salem. If outside assistance is required to update the plan, it shall be at the expense of the property owning agency or agencies.

(4) The review schedule shall result in each Area Plan being reviewed before the Board at least once every five years and updated as may be required. At the time of the review, the Board shall provide an opportunity for public comment on any proposed revisions to the plan.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0500

Area Plan Review, Adoption, Amendment, and Repeal Process

(1) The Capital Projects Advisory Board (CPAB) will hold at least one public hearing pursuant to ORS 183.360 to review the draft area plan prior to forwarding its recommendations to the DAS Director.

(a) Public hearing notice will be provided at least 20 days preceding the hearing by placing notice in a local newspaper of general circulation. Additional notice may be provided to known stakeholders and anyone who requests it in writing by whatever method the Department deems necessary or desirable.

(b) A recommendation for approval requires the affirmative vote of not less than a majority of the total membership of the Board.

(c) The Board may recommend approval, conditional approval, or substantial revision. This recommendation will be forwarded to the DAS Director, along with statements from DAS staff and the landowning agencies indicating agreement or disagreement with the area plan and with the CPAB recommendation.

(d) Once the hearing(s) have been completed, the DAS Director will approve, conditionally approve, or deny the area plan. Any conditions of approval should be made an integral part of the area plan prior to its adoption. If the plan is to be approved with a substantial modification not previously considered by the CPAB, the plan must be referred back to the Board for their reconsideration and recommendation.

(2) Adoption Adoption of an area plan is accomplished by Administrative Rule, following the accepted Permanent Rulemaking Process. Rulemaking hearings regarding area plan adoptions will be held by the CPAB. Adoptions are listed under Oregon Administrative Rules, Chapter 110.

(3) Amendment and Repeal An area plan is repealed in the same manner that it is amended, by Administrative Rule. Similar to the adoption, the CPAB must hold at least one public hearing prior to taking action.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

125-125-0600

Copies of Records

(1) Copies of tape recordings of CPAB proceedings, when available, may be purchased at a cost of \$10 per tape cassette. The person or agency requesting copies must identify the date of the proceeding. Copies will be available only for the entire proceeding; copies of specified portions of proceedings will not be available for purchase.

(2) Copies of printed records reproduced by the CPAB, when available, may be purchased at a cost of ten cents per page/side for the first five pages/sides and four cents per page/side for additional pages/sides. Copies of records larger than 8-1/2" x 14", when available, may be purchased at the actual cost incurred by the Department in making such copies available.

Stat. Auth.: ORS 183, 276

Stats. Implemented:

Hist.: DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; DAS 4-2008, f. & cert. ef. 6-17-08

ADMINISTRATIVE RULES

Rule Caption: Enterprise Geographic Information Systems (GIS) Software Standard and Non-standard GIS Software Exception Process.

Adm. Order No.: DAS 5-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 6-30-08

Notice Publication Date: 9-1-2007

Rules Adopted: 125-600-7550

Subject: This rule establishes a geographic information systems (GIS) software standard across the agencies of state government with the objective of creating a common geospatial software and data framework. This rule also: describes, at high level, the purpose of the rule and anticipated outcomes; provides clarifying definitions; defines the applicability of the GIS software standard to specific agencies; assigns accountability for related processes to certain individuals; establishes the requirement that all agencies using standard and non-standard GIS software undertake and report to DAS a one-time inventory of that use; based on the inventory excepts agencies' pre-existing non-standard GIS software use until certain events occur; authorizes and defines an exception request process for agency use of non-standard GIS software; establishes considerations to be weighed in evaluating an exception; prescribes the content of an agency request for exception; requires agencies to seek exception to the GIS software standard when certain conditions arise including anticipated expanded or new use of non-standard GIS software, and use for research or instructional purposes; authorizes a streamlined exception request process when an agency has an urgent need for non-standard use of GIS software; authorizes a process prompting reconsideration of a denial of an agency exception request; and requires the State CIO to report biennially to the Oregon Geographic Information Council regarding the efficacy of the GIS software standard.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-600-7550

Enterprise Geographic Information System (GIS) Software Standard

(1) **Purpose.** The purpose of this rule is to establish a common, enterprise GIS Software standard to promote the creation, use and exchange of inter-related and standards-based geographic data and geospatial business intelligence within and between state agencies. The objective of this standard is to provide a common geospatial software and data framework underpinning all future computer applications containing geospatial components thus increasing the value and use of those applications as state information technology assets. The GIS Software standard will also allow the State of Oregon the opportunity to leverage the buying power of the broadest possible user base. The GIS Software standard is anticipated to enable the most integrated, economic and efficient acquisition, installation and use of GIS across Oregon state government. These outcomes will be made possible through the:

- (a) Current installed base of GIS software and trained expertise within state agencies.
- (b) General technical benefits associated with the use of standardized software, including but not limited to:
 - (A) Simplified software and application infrastructure configurations.
 - (B) Ease of software installations and upgrades.
 - (C) Simplified application connectivity, security and data distribution architectures.
 - (D) The capacity for simultaneous multi-user editing, dataset versioning, and history retention.
 - (E) The ability to utilize existing geospatial business intelligence to ensure data integrity and consistency via the establishment of topology rules, data attribute domain rules, and data validation rules.
- (c) Enterprise-oriented data and application accessibility offered by the use of common GIS software deployed across state agencies.
- (d) Enhanced functionality and interoperability of related software components within a suite of software applications including the reduction of costly data translations between diverse software products and the ability to leverage data modeling and processing efforts for reuse between agencies.

(e) Ease of sharing geospatial data among agencies and with the public based on a common GIS software infrastructure.

(2) **Definitions.** For the purposes of this rule:

(a) "GIS" means geographic information systems which comprise the hardware, software, network, data, and human resources involved in creating, maintaining, managing, and distributing data, information, and knowledge about spatial objects and their relative positions.

(b) "GIS Software" means computer-language coding created specifically to facilitate the creation, management, distribution, accessibility, and promulgation of Spatial Data. For the purposes of this rule, "GIS Software" does not mean computer-language coding used for the purposes of computer aided design (CAD), simple address list management or similar business processes unless the purpose is to establish inter-agency Spatial Data.

(c) "Spatial Data" means digital information that identifies the geographic location of features and boundaries that are usually stored as coordinates and topology that can be mapped or used for comparative spatial analysis.

(d) "State Agency" or "Agency" means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

(A) The Legislative Assembly, the courts and their officers and committees;

(B) The Public Defense Services Commission;

(C) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices;

(D) The State Board of Higher Education or any state institution of higher education within the Oregon University System; and

(E) The State Lottery.

(3) **Standard.** To achieve the purposes described in section (1) of this rule the standard for GIS Software for Oregon state agencies is the scalable suite of Environmental Systems Research Institute, Inc (ESRI) software applications:

(a) Deployed at the desktop, server, or web interface levels and designed to enable the creation, manipulation, management, storage and distribution of digital maps, digital spatial objects and any associated spatial tabular databases; or,

(b) To manage shared spatially-referenced information.

(4)(a) **GIS Software Inventory.** All state agencies shall inventory and report use of all GIS Software in the format and at the time established by DAS Enterprise Information Strategy and Policy Division (EISPD). Upon conclusion of the inventory the exception process described in subsection (5) of this rule becomes effective.

(b) **Continued use of existing, installed, non-standard GIS Software declared in inventory; assumed exception.** Agencies currently using non-standard GIS Software described by the agency in the inventory required by subsection (a) of this section will be granted a written exception to the enterprise GIS Software standard until such time as any of the conditions described in section (5)(d) of this rule occur.

(5)(a) **Exception.** Notwithstanding the enterprise GIS Software standard established in subsection (3) of this rule, the State Chief Information Officer (CIO) or their designee may grant a written exception to an agency to the GIS Software standard.

(b) **Considerations for evaluating an agency exception request.** Considerations to be weighed by the State CIO or their designee in evaluating an agency request for an exception to the GIS software standard include, but are not limited to:

(A) Agency business rationale for use of non-standard GIS software;

(B) The degree to which the requested non-standard use of GIS software would materially inhibit the state from ensuring that its information resources fit together in a statewide system capable of providing ready access to and sharing of information, computing or telecommunication resources;

(C) The degree to which the requested non-standard use of GIS software would interfere with the state's goal of acquiring and using enterprise information technology resources in the most integrated, interoperable, efficient and economical manner possible; and

(D) Other factors deemed to be relevant to consider by the State Chief Information Officer (CIO).

(c) **Agency Exception Request.** An agency may be granted an exception to the GIS Software standard by submitting a written exception request to DAS EISPD. An agency exception request must address each of the considerations described in subsection (b) of this section and contain the facts base necessary to justify agency conclusions.

(d) **Conditions requiring agency to submit an exception request.** An agency must submit a written agency exception request to DAS EISPD when the any of the following conditions arise:

(A) **Use of excepted, non-standard GIS Software evolves over time.** Any agency using excepted, non-standard GIS Software must submit a request to continue that exception whenever agency's use of the non-standard GIS Software is anticipated to change. Changes include, but are not limited to:

(i) An expansion of the number of software licenses used within the agency.

(ii) Changing the license management system from desktop-oriented to network-oriented use.

(iii) Changing the software use model from a desktop to a client-server orientation.

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(iv) Supplementing the existing GIS Software use with a web-based application for functionality, data creation, data sharing, or map product distribution.

(B) **Initial acquisition of non-standard GIS Software.** Before initial acquisition of non-standard GIS Software an agency must request an exception to the GIS Software standard.

(C) **Non-standard GIS Software used for documented research or instructional purposes.** Before initial or expanded use of non-standard GIS Software for research or instructional purposes an agency must request an exception to the GIS Software standard. A single exception request from an agency should be sufficient to cover all research and instruction conducted by any division, unit, or individual of that agency.

(e) **Emergency exception.** Notwithstanding the exception request process described in subsections (c) and (d) of this section, the State CIO may waive some or all of the requirements for written submission of an agency exception request when immediate action is required to address an agency's emergency need to use non-standard GIS Software.

(f) **Reconsideration.** An agency may request reconsideration of a denial of a GIS Software standard exception request by submitting a subsequent request in writing to the State CIO containing additional supporting information that was not included in the original exception request.

(6) **Biennial Review.** At least once every two years the State CIO must issue a written report to the Oregon Geographic Information Council regarding the efficacy of the GIS Software standard and its accomplishment of the purposes described in subsection (1) of this rule.

Stat. Auth.: ORS 291.038

Stats. Implemented: ORS 291.038

Hist.: DAS 5-2008, f. 6-23-08, cert. ef. 6-30-08

Rule Caption: DAS Public Contracting Rules.

Adm. Order No.: DAS 6-2008

Filed with Sec. of State: 7-2-2008

Certified to be Effective: 7-2-08

Notice Publication Date: 6-1-2008

Rules Adopted: 125-246-0333, 125-246-0365, 125-246-0556, 125-247-0340

Rules Amended: 125-246-0100, 125-246-0110, 125-246-0130, 125-246-0140, 125-246-0170, 125-246-0200, 125-246-0310, 125-246-0330, 125-246-0335, 125-246-0345, 125-246-0350, 125-246-0353, 125-246-0400, 125-246-0410, 125-246-0420, 125-246-0430, 125-246-0440, 125-246-0450, 125-246-0460, 125-246-0555, 125-246-0560, 125-246-0570, 125-246-0575, 125-246-0800, 125-247-0010, 125-247-0100, 125-247-0170, 125-247-0200, 125-247-0255, 125-247-0256, 125-247-0260, 125-247-0261, 125-247-0265, 125-247-0270, 125-247-0275, 125-247-0280, 125-247-0286, 125-247-0287, 125-247-0288, 125-247-0295, 125-247-0296, 125-247-0300, 125-247-0305, 125-247-0310, 125-247-0330, 125-247-0400, 125-247-0410, 125-247-0430, 125-247-0525, 125-247-0550, 125-247-0575, 125-247-0600, 125-247-0610, 125-247-0691, 125-247-0700, 125-247-0710, 125-247-0730, 125-247-0731, 125-247-0750, 125-248-0100, 125-248-0130, 125-248-0200, 125-248-0210, 125-248-0220, 125-248-0240, 125-248-0250, 125-248-0300, 125-248-0340, 125-249-0100, 125-249-0140, 125-249-0150, 125-249-0160, 125-249-0200, 125-249-0210, 125-249-0220, 125-249-0270, 125-249-0280, 125-249-0290, 125-249-0310, 125-249-0390, 125-249-0395, 125-249-0430, 125-249-0460, 125-249-0470, 125-249-0630, 125-249-0645, 125-249-0800, 125-249-0860

Rules Repealed: 125-246-0355, 125-247-0293, 125-247-0294

Subject: The Department of Administrative Services (DAS) developed rules (Rules) for state agencies under DAS purchasing authority to implement the Public Contracting Code, ORS 279ABC (Code), effective March 1, 2005. In 2006, DAS adopted additional Rules and amended select Rules in response to legislative changes to the Code in 2005 and experience with the Rules. Now, DAS needs to adopt additional Rules, amend select Rules, and repeal select Rules in response to legislative changes to the Code in 2007 (HB 2140) and refinements and clarifications requested by shareholders.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-246-0100

Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure for the Public Contracting of Agencies subject to these Rules and all state agencies that are subject to the DAS rules adopted under ORS 279A.140(2)(h) to regulate personal serv-

es contracts (see OAR 125-246-0353). According to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. The Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering and Land Surveying Services, and Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(2) If a conflict arises between these Division 246 Rules and Rules in Division 247, 248 or 249, the Rules in Divisions 247, 248 or 249 take precedence over these Division 246 Rules.

(3) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(4) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and despite other provisions of the Public Contracting Code, under the following conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or 279C.005 through 279C.670.

(5) New Rules. Except for Section (6) of this Rule, the authority for Amendments according to OAR 125-246-0170, and 125-246-0560(13), these Division 246 Rules apply to Public Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

(6) Old Rules.

(a) According to Oregon Laws 2005, Chapter 103, Section 39, the rules repealed by section 332, Chapter 794, Oregon Laws 2003 (Old Rules) will continue to apply to Transitional and Old Contracts, including Contract Administration as defined in the Old Rules, except for Amendments and the related authority for Amendments. (See OAR 125-246-0170 and 125-246-0560(13))

(b) Section (6) of this Rule applies retroactively to and is effective on and after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030, 279A.065 & OL 2005, Ch. 103, Sec. 39

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0110

Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) "Advocate for Minority, Women and Emerging Small Business" means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses according to ORS 200.025.

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(5) An "Administrator" or "Administering Agency" is defined in OAR 125-246-0400(3)(a).

(6) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(7) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(9) "Agreement to Agree" means a Price Agreement as defined in subsection (110).

(10) "Amendment" means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of OAR 125-246-0560. For the purposes of these Rules, Amendments are included within the definitions of "Procurements" and "Contract Administration."

(11) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect."

(12) "Architectural, Engineering and Land Surveying Services" is defined in ORS 279C.100 and collectively means professional services that are required to be performed by an architect, engineer or land surveyor. "Architectural, Engineering and Land Surveying Services" includes "Architectural, Engineering or Land Surveying Services," separately or any combination thereof, as appropriate within the context of a Rule.

(13) "Architectural, Engineering and Land Surveying Services, and Related Services" is defined in ORS 279C.100 and 279C.100(6) and collectively means professional services that are required to be performed by an architect, engineer or land surveyor and Related Services. "Related Services" means services that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services. "Architectural, Engineering and Land Surveying Services, and Related Services" includes "Architectural, Engineering or Land Surveying Services, or Related Services, separately or in any combination thereof, as appropriate within the context of a Rule.

(14) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they are in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(15) "Authorized Agency" means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency's behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see OAR 125-246-0170 only.

(16) "Award" means, as the context requires, either identifying or occurrence of the Agency's identification of the Person with whom the Agency intends to enter into a Contract following the resolution of any protest of the Agency's selection of that Person, and the completion of all Contract Negotiations.

(17) "Bid" means a Written response to an Invitation to Bid.

(18) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(19) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(20) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names,

makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(21) "Business Day" means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(22) "Chief Procurement Officer" means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules.

(23) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

(24) "Client" means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(25) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(26) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(27) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(z), and "Code" means ORS Chapters 279A, 279B and 279C.

(28) "Competitive Quotes" means the sourcing method according to OAR 125-249-0160.

(29) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0261 or 125-249-0650.

(30) "Competitive Sealed Bidding" means the sourcing method according to ORS 279B.055.

(31) "Competitive Sealed Proposals" means the sourcing method according to ORS 279B.060.

(32) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering and Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

(33) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(34) "Contract Administration" means all functions related to a given Contract between an Agency and a Contractor from the time the Contract is

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awarded until the Work is completed and accepted or the Contract is terminated, payment has been made, and disputes have been resolved. Contract Administration includes Amendments.

(35) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.

(36) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(37) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(38) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(39) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(40) "Contracting Agency"

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(41) "Cooperative Procurement" is defined in OAR 125-246-0400(3)(c).

(42) "Cooperative Procurement Group" is defined in OAR 125-246-0400(3)(d).

(43) "Days" means calendar days.

(44) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

(45) "Department" means the Oregon Department of Administrative Services.

(46) "Department Price Agreement" means a Price Agreement issued by the Department's State Procurement Office on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a Department Price Agreement for those authorized Supplies and Services exists.

(47) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(48) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(49) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(50) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

(51) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(52) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

(a) The World Wide Web;

(b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the State Procurement Office. An Electronic Advertisement may or may not include a Solicitation Document.

(53) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

(a) The World Wide Web or some other Internet protocol; or

(b) ORPIN.

(54) "Electronic Procurement System" means ORPIN or other system approved by the State Procurement Office, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(55) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(56) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition. An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(57) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(58) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(59) "Established Catalog Price" is defined in ORS 279B.005(1)(a) and means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(60) "Executive Department" is defined in ORS 174.112 and subject to ORS 174.108, means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in section 1, Article III of the Oregon Constitution, and that are not:

(a) In the judicial department or the legislative department;

(b) Local governments; or

(c) Special government bodies.

(d) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(A) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(B) Any entity created by the Executive Department other than an entity described in Subsection (c), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(61) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

(a) Operational, budget and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(62) "Fire Protection Equipment" is defined in ORS 279A.190 and 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(63) "Flagger" is defined in ORS 279C.810 and means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(64) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(65) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

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(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(66) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305.

(67) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;
- (d) Failure to make timely payments for labor, equipment and materials;

- (e) Damage to the prime Contractor or subcontractor; or
- (f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(68) "Goods" is derived from the definition in ORS 279B.005(b) and means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(69) "Goods and Services" or "Goods or Services" is defined in ORS 279B.005 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies of Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

(70) "Grant" is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(71) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(72) "Informal Selection" means the procedure according to OAR 125-248-0210.

(73) "Intermediate Procurement" means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(74) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400(3)(e).

(75) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with either ORS 279B.055 or 279C.335.

(76) "Joint Cooperative Procurement" is defined in OAR 125-246-0400(3)(f).

(77) "Judicial Department" is defined in ORS 174.113 and means:

(a) The Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(c) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Judicial Department other than an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(78) "Labor Dispute" is defined in ORS 662.010 and means any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(79) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(4).

(80) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(81) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means:

(a) The Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(c) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(82) "Locality" is defined in ORS 279C.800(2) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(83) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

ADMINISTRATIVE RULES

(84) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(85) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(86) "Multiple-tiered" or "Multisteped" means the type of process used in Competitive Sealed Bidding and Competitive Sealed Proposals according to ORS 279B and OAR Division 247, where the process is staged in phases. For example, a multisteped proposal process includes more than one opportunity to submit proposals for the same project.

(87) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(88) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(89) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(90) "Not-for-Profit Organization" is defined in ORS 307.130(4)(c) and means a Nonprofit Corporation.

(91) "OAR" means the Oregon Administrative Rules.

(92) "Offer" means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(93) "Offeror" means a Person who submits an Offer

(94) "Offering" means a Bid, Proposal, or Quote.

(95) "Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(96) "Old Contracts" means all Public Contracts entered into before March 1, 2005. See OAR 125-246-0100(5).

(97) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the State Procurement Office.

(98) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(99) "Ordering Instrument" or "Order" means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency's appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider's responsive and appropriate acceptance of the Offer creates a Public Contract.

(100) "Ordinary Construction Services" means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(101) "Original Contract" means the initial Contract or Price Agreement as solicited and awarded by the State Procurement Office or an Authorized Agency. See OAR 125-246-0400(3)(h) for the definition of "Original Contract" that the Public Contracting Code and Rules use for Cooperative Procurements only.

(102) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further defined in OAR 125-246-0500.

(103) "ORS" means the Oregon Revised Statutes.

(104) "Participant," is defined in OAR 125-246-0400(3)(i).

(105) "Permissive Cooperative Procurement" is defined in OAR 125-246-0400(3)(j).

(106) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(107) "Personal Services" means the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, which primary purpose is to acquire specialized skills, knowl-

edge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, information technology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). "Personal Services" is also defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Land Surveying Services or Related Services.

(108) "Personal Services Contract" means a Contract or a member of a class of Contracts for Personal Services, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100. Contracts for Architectural, Engineering and Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(109) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(110) "Price Agreement."

(a) "Price Agreement" is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A "Price Agreement" as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(111) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering and Land Surveying Services, and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(112) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 279C.450.

(113) "Procurement File" means any of the following files maintained by an Authorized Agency: a solicitation, C[c]ontract, Work Order, or contract administration file, separately or collectively.

(114) "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(115) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(116) "Property" is defined in ORS 279A.250 and means personal property.

(117) "Proposal" means a Written response to a Request for Proposals.

(118) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering and Land Surveying Services, and Related Services according to OAR 125-248-0110(4), whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(119) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(120) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

ADMINISTRATIVE RULES

(121) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(122) "Public Body" is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(123) "Public Contract" is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(124) "Public Contracting" is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(125) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(126) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(127) "Public Improvement" is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(128) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for, by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(129) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(130) "QBS" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering and Land Surveying Services, and Related Services Contracts.

(131) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(132) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(133) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(134) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(135) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(136) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(137) "Related Services" is defined in ORS 279C.100(6) and means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management

services, construction management services and owner's representative services or land-use planning services.

(138) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(139) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(140) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(141) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "resident Bidder."

(142) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(143) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under OAR 125-247-0575 or 125-249-0370.

(144) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(145) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively.

(146) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(147) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(148) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(149) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(150) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(151) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(152) "Rules" means these Public Contracting Rules of the Department including Divisions 246 through 249, unless otherwise indicated.

(153) "Scope" means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(154) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(155) "Services" or "services," for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(156) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

ADMINISTRATIVE RULES

(157) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(158) "Small Procurement" means a sourcing method according to ORS 279B.065.

(159) "Sole-Source Procurement" means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(160) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself.

A Solicitation and award process uses methods identified in ORS 279A.200 through 279A.220 (Cooperative Procurement); ORS 279B.055 through 279B.060 (bidding and proposals); ORS 279B.070 (intermediate procurements); ORS 279B.085 (special procurements); ORS 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements).

(161) "Solicitation Document," means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. "Solicitation Document" includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement.

(162) "Special Government Body" is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(163) "Special Procurement" means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(164) "Specification" is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. "Specification" includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(165) "State" means the State of Oregon.

(166) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(167) "State Procurement Office" means that office of the State Services Division of the Department designated by the Director to carry out the authority of the Department under the Public Contracting Code and these Rules. The State Procurement Office provides leadership and services for innovative, responsive, and accountable public Procurement. The authority of the State Procurement Office is described in ORS 125-246-0170, originating with the Director, delegated to the Chief Procurement Officer, and subdelegated in writing by the Chief Procurement Officer to any subdelegatee within the State Procurement Office. When a Rule refers to the approval of the State Procurement Office, any individual acting on behalf of the State Procurement Office must be authorized to give such approval in accordance with OAR 125-246-0170.

(168) "Substantial Completion" is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(169) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering and Land Surveying Services, and Related Services, governed under ORS 279C.

(170) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(171) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(172) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of \$5,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(173) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(174) "Transitional Contracts" means all Public Contracts first advertised before March 1, 2005, but not entered into until on or after March 1, 2005. See OAR 125-246-0100(6).

(175) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(176) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(177) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(178) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(179) "Work Order" means an Ordering Instrument.

(180) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(181) "Written" means existing in Writing.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0130

Application of the Code and Rules; Exceptions

(1) Code, Rules and Policies. Except as set forth in this Section and ORS 279A.025, an Agency must exercise all rights, powers and authority related to Public Contracting in accordance with the Public Contracting Code, Rules, and applicable Department policies (Policies).

(2) Exceptions for Contracts and Grants. These Rules do not apply to the following:

- (a) Contracts between Agencies;
- (b) Contracts between Agencies and Public Bodies;
- (c) Contracts between Agencies and the federal government;
- (d) For Cooperative Procurements, any contractual relationship described in subsections (2)(a) through (c) of this Rule. The Code, Rules, and policies apply to the contractual relationships between the Agencies and Providers, other states, tribes, other nations, and any of their public entities; and
- (e) Grants:

(A) Agency as Recipient. If an Agency is a recipient in an agreement with a grantor, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the grantor has substantial involvement in the program or activity of the Agency, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(B) Agency as Grantor. If an Agency is a grantor in an agreement with a recipient, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the Agency has substantial involvement in the program or activity of the Agency's recipient, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(3) Exception for a Federal Program. Authorized Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program described in ORS 279A.180 and according to OAR 125-246-0360, without following the procedures set forth in ORS 279B.050 through 279B.085 and 125-247-0250 through 125-247-0690.

(4) Exception for Qualified Rehabilitation Facilities. Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services according to ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 (Acquisition of Supplies and Services from Qualified Rehabilitation Facilities). Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

(5) Exception for Correctional Industries. Agencies otherwise subject to the Code and these Rules may enter into Contracts with correctional industries according to the Oregon Constitution, Article I, Subsection 11, without being subject to the source selection procedures set forth in either ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and their respective rules.

(6) Exception for Price Agreements. Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services from a DAS Price Agreement or other Price Agreement. Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.025, 279A.050, 279A.055 & 279A.180
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0140

Procurement Authority

(1) The Department must conduct all Procurements and administer the contracting for Supplies and Services; Architectural, Engineering and Land Surveying Services, and Related Services; and Public Improvements for the Agencies, unless delegated, according to ORS 279A.140 and 279C.105(1). Delegations of authority in accordance with OAR 125-246-0170 do not relieve the Department of this responsibility.

(2) For Agencies, the Department and its Director are the Contracting Agency described in the Public Contracting Code and represent the Agencies. Authorized Agencies receive delegated authority according to OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050(1)(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0170

Delegation of Authority

(1) Generally.

(a) Purpose. The purpose of this Rule is to specify the policy and procedures related to the delegation of authority according to the Code, including but not limited to authority related to Procurements, approvals, orders, reports, and other procedures (Authority). Only this Rule delegates this Authority. This Rule consists of the following:

(A) Section (1) applies to all delegations and subdelegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations;

(B) Section (2) applies to individuals in the Agencies; and

(C) Section (3) applies to the Chief Procurement Officer.

(b) Policy.

(A) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

(B) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, according to ORS 279A.015. These Rules support this policy of the Code.

(C) Individual Representation. Public Contracting requires individual representation of the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule. All individual delegates must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Subdelegations may be in whole or in part according to ORS 279A.075. Any individual may decline a subdelegation in whole or in part.

(c) Delegation of Authority by this Rule. The Director of the Department hereby delegates Authority to individuals in the Agencies, only as set forth in Section (2), and delegates Authority to the Chief Procurement Officer, including the discretionary power to revoke the Authority hereby given to individuals in the Agencies, only as set forth in Section (3). A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(d) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and subdelegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

(A) This Rule by the Director of the Department;

(B) A Written external or internal policy by an authorized delegator or revoker;

(C) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(D) A letter or memorandum signed by an authorized delegator or revoker.

(e) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(A) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency or Designated Procurement Officer, the delegator of authority to that individual must notify the State Procurement Office within thirty (30) days after the change in representation.

(B) Subdelegations, if any, by an Absent Individual remain in effect unless and until the Authority of any subdelegates is modified or revoked by an Authorized Individual.

(f) Requirements.

(A) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. To the extent applicable, any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(B) Modifications or Revocations.

(i) Authority. Subject to the conditions of Subsection (ii) below, any Delegation may be modified or revoked by:

(I) The Director of the Department,

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(II) The Chief Procurement Officer in accordance with Section (3)(d)(F);

(III) The head of an Agency in accordance with Subsection (2)(a)(B); or

(IV) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(i) Conditions.

(I) This modification or revocation of a Delegation must be Writing;

(II) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and

(III) This modification or revocation of a Delegation must be based upon a determination, as set forth in the related policy of the Department.

(C) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(g) Signature. When an Authorized Agency has delegated Authority according to this Rule, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as described in Subsections (1)(h), (2)(a)(B), and (2)(b)(F).

(h) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allotments by the Department, and an individual's authority to commit or encumber funds, financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(2) Delegation to Individuals in Agencies.

(a) Chain of Delegation and Responsibilities.

(A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in Subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must send a Written notice of its appointment of the Designated Procurement Officer to the State Procurement Office.

(B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in subsection (2)(d)(Q), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's sub-delegatees, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this Section (2), except as provided in Subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, according to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms.

If the Designated Procurement Officer is unable to make a Commitment of Funds as described in Subsection (1)(h), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in Subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$5,000, according to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering and Land Surveying Services and Related Services according to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, according to ORS 279B.070 and OAR 125-247-0270, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(D) Informal Selection Procedures of Architectural, Engineering and Land Surveying Services and Related Services according to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed \$100,000, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding \$150,000 and according to OAR 125-247-0255 or 125-247-0256;

(G) Competitively Sealed Proposals not exceeding \$150,000 and according to OAR 125-247-0260 or 125-247-0261;

(H) Sole-Source Procurements not exceeding \$150,000 and according to ORS 279B.075 and OAR 125-247-0275;

(I) Special Procurements in accordance with OAR 125-247-0287 not exceeding \$150,000.

(J) Purchase of Used Personal Property Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(8);

(K) Reverse Auctions Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(10); and

(L) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized according to this Section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the State Procurement Office on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Despite Subsection (2)(c)(K)(i) through (iv) above, this Delegation by Subsection (2)(c)(K) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the State Procurement Office on behalf of Agencies, Amendments when the amended value of Contract exceeds

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\$150,000; and terminations of such Contracts when the amended value of such Contract exceeds \$150,000.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0430, provided that:

(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of \$150,000, including all Amendments, according to OAR 125-246-0560;

(iii) No such Procurement of Public Improvements exceeds \$100,000, including Amendments according to OAR 125-246-0560; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding \$150,000 or according to a delegation agreement with the State Procurement Office, and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements according to OAR 125-247-0288(1) and (2);

(E) Client Services procured under ORS 279B.055 through 279B.085 and related Rules, including all amendments according to OAR 125-246-0560;

(F) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements pursuant to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer or delegatee of the State Procurement Office;

(G) Advertising Contracts Special Procurements according to OAR 125-247-0288(3);

(H) Equipment Repair and Overhaul Special Procurements according to OAR 125-247-0288(4);

(I) Contracts for Price Regulated Items Special Procurements according to OAR 125-247-0288(5);

(J) Investment Contracts Special Procurements according to OAR 125-247-0288(6);

(K) Food Contracts Special Procurements according to OAR 125-247-0288(7); and

(L) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295.

(e) Supplemental Requested Delegations. Any Agency may submit a request for a Delegation to the State Procurement Office for authority in accordance with the Public Contracting Code, this Rule, and the related policy of the Department.

(A) The Department will identify in policy the necessary requirements for requesting and obtaining delegated authority according to this Rule.

(B) All Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant factors set forth in the related policy of the Department.

(3) Delegation to the Chief Procurement Officer.

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part according to ORS 279A.075;

(B) Approve Special Procurement requests, according to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, according to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, according to ORS 279C.335, 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests according to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications according to ORS

279A.110, 279B.425, 279C.450, 200.065(5), and 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve Unanticipated Amendments according to OAR 125-246-0560(2);

(I) Approve expedited notices for Sole-Source Procurements according to OAR 125-247-0275;

(J) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, according to ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0460;

(K) Determine authorization for purchases through federal programs according to ORS 279A.180 and OAR 125-246-0360; and

(L) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and according to ORS 279B.055(4)(c) and 279C.360(1);

(M) Approve the manner and character of retainage according to ORS 279C.560(1) and (5);

(N) Approve exemptions waiving or reducing the bid security or bonds for Public Improvement projects in accordance with ORS 279C.390(1); and

(O) Other actions of the State Procurement Office specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals;

(iv) The ability and assent of the individual to be accountable for the delegated Procurement; or

(v) The short-term demands upon the staff and resources of the State Procurement Office, arising from unusual circumstances;

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with (3)(d)(F), in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals; or

(iv) The ability and assent of the individual to be accountable for the delegated Procurement;

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Provide training and instruction opportunities to assure SPO staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in Subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition according to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies and according to ORS 279B.065;

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(B) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, on behalf of Agencies and according to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services, on behalf of Agencies and according to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed \$100,000, according to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, according to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering and Land Surveying and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0460, except as provided in Section (7)(a)(C) of this Rule; and the State Procurement Office may delegate this authority by agreement to an Authorized Agency, provided this Delegation to an Authorized Agency meets the following criteria:

- (i) There is no pre-existing Department Price Agreement or Mandatory Use Agreement;
- (ii) The proposed Procurement does not negatively impact DAS Price Agreements or other Contracts identified by the State Procurement Office;
- (iii) A competitive process was used for the original agreement; and
- (iv) The initial Solicitation was or will be advertised in Oregon.

(B) Special Procurements according to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360; and

(F) All Procurements otherwise delegated to an Authorized Agency according to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a determination that any Authorized Agency refuses or fails to comply with any Delegation described in Section (2).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0200

Affirmative Action; Limited Competition Permitted

According to ORS 279A.100, an Authorized Agency may limit competition on Public Contracts for Supplies and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies in accordance with any policies and procedures established by the Department.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.100
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0310

Reciprocal Preferences

(1) When evaluating Offers according to OAR 125-247-0255 through 125-247-0261, 125-249-0390 or 125-249-0640 through 125-249-0660, Authorized Agencies must add a percentage increase to the Offer of a Nonresident Offeror equal to the percentage, if any, of the preference that would be given to that Offeror in the state in which the Offeror resides. An Authorized Agency may rely on the list prepared and maintained by the Department according to ORS 279A.120(4) to determine both:

- (a) Whether the Nonresident Offeror's state gives preference to in-state Offerors; and
- (b) The amount of such preference.

(2) Authorized Agencies must add a percentage to the Offer as described in Section (1) before determining Tie-Offers in accordance with OAR 125-246-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.120
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0330

State Procurement

(1) Tax Compliance. No Contract or other agreement for more than \$1,000 may be entered into, renewed or extended with any Person unless the Person certifies in Writing, under penalty of perjury, that the Person is not in violation of any tax laws described in ORS 305.385(6) and (7).

(2) Requirements to Transact Business in Oregon.

(a) A Contractor who is a corporation, partnership, or who has an assumed business name must be registered with the Secretary of State Office in accordance with ORS Chapters 58, 60, 62, 63, 65, 67, 70, and 648. This registration is the obligation of the Contractor, not the Agency.

(b) In addition, for Contracts requiring the services of one or more architects, engineers, and land surveyors, these Consultants must be registered with the appropriate licensing boards under the provisions of ORS 671.020, 672.020, and 672.025.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070; Sec.335, Ch. 794, OL 2003 (HB 2341)
Stats. Implemented: ORS 279A.140, 279C.105(1)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0333

Independent Contractors

(1) An Authorized Agency may, within the limits of its delegation under OAR 125-246-0170 and its legislatively approved budget, Contract for Personal Services with Providers who are Independent Contractors.

(2) "Independent Contractor" means a Person who provides services to an Authorized Agency in which the Authorized Agency neither controls nor has the right to control the means or manner by which Work is performed. The Authorized Agency may control the results of the services, but not control the means or manner of Contractor's performance of the Work.

(3) Within the parameters of employment, Workers' compensation, and other relevant state and federal laws, and after determining that the contract will not violate any collective bargaining agreements, an Authorized Agency may contract for Personal Services when:

(a) The Work cannot be done in a reasonable time with the Authorized Agency's own Workforce;

(b) An independent and impartial evaluation is required; or

(c) It will be less expensive to contract for the Work.

(4) The Authorized Agency may not use Personal Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the Authorized Agency may not enter into a Personal Services Contract with the Contractor; instead, the Authorized Agency must follow personnel policies for employment options.

(5) Independent Contractor Status. The Authorized Agency must develop a Statement of Work for Trade or Personal Services, including Architectural, Engineering and Land Surveying Services, and Related Services, that will not result in an employee relationship with the potential Contractor. Contractors must complete the Independent Contractor Certification either as a contract provision or on a form approved by the State Procurement Office (Independent Contractor Certification). If the Contractor cannot certify Independent Contractor status, the Authorized Agency may not contract with the Contractor using a Trade or Personal Services Contract, including Architectural, Engineering and Land Surveying Services, and Related Services, except as otherwise allowed in Subsection (5)(f) of this Rule:

(a) An Independent Contractor Certification must be part of each Contract;

(b) If the Contractor is a corporation, the Independent Contractor Certification is still required.

(c) If the nature of the Services or project is such that an employee/employer relationship will exist, the Authorized Agency must hire the individual through normal personnel procedures.

(d) The Contract must include the Contractor's legal name and address. Either the Contract or a separate cover sheet for the Contract must include the Contractor's Social Security or federal tax identification number.

(e) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(f) When a Contractor cannot certify that the Contractor meets the definition of "independent contractor," is customarily engaged in an independently established business, and meets at least three of the requirements for such a business in accordance with ORS 670.600, then the Authorized Agency may contract with the Contractor only if the Designated Procurement Officer of the Authorized Agency approves the Contract upon a determination that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.140
Hist.: DAS 6-2008, f. & cert. ef. 7-2-08

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125-246-0335

Authority and Standards for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services, and Related Services.

(2) Identification of Personal Services Contracts.

(a) According to ORS 279A.140(2)(h), the State Procurement Office may designate Contracts or classes of Contracts as Personal Services Contracts for the purposes of reporting Personal Services Contracts in accordance with ORS 279A.070 and 270A.140. In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the State Procurement Office may determine whether a particular contract is a Personal Services Contract.

(b) The Authorized Agency must identify within the Contract that the Authorized Agency is contracting for Personal Services. A failure to adequately describe Personal Services within the Contract will not invalidate the Procurement or Contract if the Authorized Agency properly used a sourcing method according to ORS 279B.055 through 279B.085 or 279C.100 through 279C.125 and substantially followed the related Rules regarding screening, selection, evaluation, award, and approval in accordance with these Rules, OAR 125-246-0345 through 125-246-0355 or 125-246-0100 through 125-246-0320.

(3) Contracting Out for Services Provided by Employees.

(a) Where the Authorized Agency is contemplating contracting for Work performed by Authorized Agency employees represented by a labor organization, the Authorized Agency must review the relevant collective bargaining agreement to ensure the contract complies with the provisions and, if applicable, the requirements of ORS 279A.140.

(b) Whenever the Authorized Agency pays more in a given 12-month period to a Provider under a Personal Services Contract for services historically performed by state employees than would have been paid to the Authorized Agency employee performing the same Work, the Authorized Agency must report that fact, with a justifying statement to the Department. The report must be made at the conclusion of each fiscal year.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0345

Procedures for Personal Services Contracts.

(1) Contract and Amendment Forms for Architectural, Engineering and Land Surveying Services, and Related Services. Authorized Agencies must comply with OAR 125-248-0300(1).

(2) Other Forms for Personal Services Contracts and Amendments. Authorized Agencies must use one of the forms provided or approved by the State Procurement Office for Personal Services Contracts and Amendments (Forms).

(a) Revised Forms.

(A) Designated Procurement Officer Approval up to \$100,000. For revised Forms up to a cumulative value of \$100,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to the Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(B) Department of Justice Approval over \$100,000. For revised Forms exceeding a cumulative value of \$100,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval.

(b) Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(c) The Authorized Agency must review the approved Form at least every two years. If upon review the Authorized Agency revises the Form, the Authorized Agency must obtain Department of Justice approval prior to using the revised Form.

(3) Screening, Selection, Evaluation and Award Procedures. An Authorized Agency must follow the procedures set forth in Division 248 of these Rules when contracting for Architectural, Engineering and Land Surveying Services, and Related Services. For all other Personal Services Contracts, an Authorized Agency must select a sourcing method from the seven methods available according to ORS 279B.055 through 279B.085 and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in Division 247 of these Rules.

(4) Amendments and Reinstatements. The procedures for Amendments and reinstatements are found in OAR 125-246-0560 and 125-

246-0570, respectively. Procedures for Amendments and reinstatements for Architectural, Engineering and Land Surveying Services, and Related Services are found in OAR 125-248-0340 and 125-248-0310, respectively.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.70 & 279A.140(h)(B)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0350

Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services, and Related Services.

(2) State Procurement Office Approval. Except as provided in OAR 125-246-0170, the State Procurement Office must approve all Personal Services Contracts exceeding \$150,000 before the Authorized Agency executes the Contract.

(3) Requisite Approvals First. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Services Contract entered into by an Authorized Agency becomes binding upon the State and before any service may be performed or payment made under the Contract, unless the Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(4) Approval after Legal Sufficiency Review. The State Procurement Office may not approve a Personal Services Contract before the Attorney General approves this Personal Services Contract under ORS 291.047.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

(b) When an Authorized Agency contracts for services normally provided by another Authorized Agency or for services for which another Authorized Agency has statutory responsibilities, the Authorized Agency is required to seek the other Authorized Agency's approvals, prior to final approval by the State Procurement Office. Examples of these special approvals include, but are not limited to:

(A) Department, Risk Management Division, for providing tort liability coverage.

(B) Department, State Services Division, Publishing and Distribution, for printing services;

(C) Department, State Controller's Division, for accounting services;

(D) Office of the Treasurer, Debt Management Division, for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(E) Department, Enterprise Information Strategy and Policy Division, for information-system related and telecommunications services. The Authorized Agency is also encouraged to use this Division's Enterprise Planning and Policy Section as a resource in carrying out information system-related projects. This may include:

(i) Assistance to the Authorized Agency in developing Statements of Work related to information system projects;

(ii) Reviews to assure consistency with State standards and direction; and

(iii) A listing of vendors that provide information system-related services.

(c) The Authorized Agency's and Contractor's execution must be obtained;

(d) The State Procurement Office approval, when required, is last. The State Procurement Office must use its best efforts to approve all Personal Services Contracts within five (5) business days. A longer period might be necessary for Contracts that are incomplete or Contracts where additional information must be acquired.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Only the Attorney General may grant exceptions in Writing on a case-by-case basis;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Only the Secretary of State Audits Division may grant exceptions in Writing on a case-by-case basis.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0353

Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services, and Related Services.

(2) The State Procurement Office maintains for state agencies an electronic reporting system within ORPIN for reporting Personal Services Contracts. Each state agency that is not exempt from the Public Contracting

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Code must report in ORPIN each Personal Services Contract and Amendment. The report must include the state agency name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, its basic purpose, and a copy of the Personal Services Contract or Amendment. Whenever a state agency pays more in a calendar year under a Personal Services Contract for services historically performed by state employees than the state agency would have paid to the state agency's employees performing the same Work, the state agency must so report through ORPIN and include in the report a statement of justification for the greater costs, according to ORS 279A.140(2)(h)(A)(i).

(3) The State Procurement Office must submit a report to the Legislature summarizing state agency Personal Services Contracts. This report must include the name of the state agency, the not-to-exceed amount of the Contracts, the name(s) of Contractor(s), the duration of Contract(s) and the basic purpose of the Contract(s). The report must also include the total dollar figure of all Personal Services Contracts for each fiscal year.

(4) The State Procurement Office maintains an electronic file of Personal Services Contracts report forms for public review. The electronic file includes a justification statement, when applicable, and documentation of the selection process for each Contract.

(5) The state agency must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and the report forms in compliance with OAR 166-300-0015(7) and any other applicable laws.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(h)(A)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0365

ORS 190 Agreements

(1) Reporting 190 Agreements through ORPIN. A state agency that enters into an agreement under ORS 190.110, 190.420 or 190.485, or an agreement under ORS 190.112 or 660.342, must submit a summary of the agreement through ORPIN within the 30-day period immediately following the effective date of the agreement. The summary must include the following information:

(a) Names of the parties to the agreement;

(b) Date of the agreement;

(c) Subject matter of the agreement; and

(d) The agency through which a person may obtain a copy of the agreement.

(2) Interstate and International Agreements. Following ORS 190, each Agency may enter into Interstate and International Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(3) Tribal Agreements. Following ORS 190, each Agency may enter into Tribal Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(4) Interagency and Intergovernmental Agreements. Following ORS 190, each Agency may enter into Interagency and Intergovernmental Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(5) All Interstate, International, Tribal, Interagency and Intergovernmental Agreements, when required, are subject to review and approval by the Attorney General.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 190.110, 190.112, 190.420, 190.485, 279B.085, 660.342

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0400

Purpose, Policy, and Definitions

(1) Purpose. These Rules for Cooperative Procurement specify the policy and procedures of the State Procurement Office or Authorized Agency for using one of the three Cooperative Procurement methods; Joint Cooperative Procurements, Permissive Cooperative Procurements, and Interstate Cooperative Procurements. An Administrator's Original Contract or a Participant's Contract with a Provider in a Cooperative Procurement is subject to ORS 279A and these Rules, unlike agreements solely between Authorized Agencies under ORS Chapter 190 that are excepted from the Code by OR 279A.025.

(2) Policy. It is the policy of the Department that Authorized Agencies will collaborate to leverage their purchases for Supplies and Services to achieve efficiency in state government by optimizing the benefits from these Cooperative Procurements.

(3) Definitions. For the purposes of these Cooperative Procurement Rules only, the following definitions apply to Cooperative Procurement:

(a) An "Administrator" means a governmental body that solicits and establishes the Original Contract for Supplies and Services or Public Improvements in a Cooperative Procurement. "Administrator" means the State Procurement Office or subject to the approval of the State

Procurement Office: an Agency, another Public Body within the state of Oregon, or a governmental body outside the state of Oregon. An Administrator has the same rights and responsibilities as an Administering Contracting Agency under ORS 279A.200 through 279A.225.

(b) "Contract" means a Public Contract or Price Agreement resulting from a Cooperative Procurement by an Administrator.

(c) "Cooperative Procurement" means a Procurement conducted by an Administrator or on behalf of one or more Participants. Cooperative Procurement includes but is not limited to multiparty Contracts and Price Agreements.

(d) "Cooperative Procurement Group" means:

(A) A group of Agencies, Public Bodies within the state of Oregon or any governmental body outside the state of Oregon, separately or in any combination;

(B) Approved by the State Procurement Office; and

(C) Joined through an intergovernmental agreement for the purposes of facilitating a Cooperative Procurement.

(e) "Interstate Cooperative Procurement" means a Permissive Cooperative Procurement in which the Administrator is authorized under that governmental body's laws, rules, or regulations to enter into Public Contracts and in which one or more of the Participants are located outside the State of Oregon.

(f) "Joint Cooperative Procurement" means a Cooperative Procurement that identifies:

(A) The Participants or the Cooperative Procurement Group; and

(B) The contract requirements or estimated contract requirements for the Original Contract.

(g) "Material Change" or "Material Alteration" means an alteration in a Public Contract or Solicitation that is different in effect from the original meaning or Scope. This includes changes in quality, price or type of Supplies, Services or Public Improvements.

(h) "Original Contract" means the initial Contract or Price Agreement awarded under a Cooperative Procurement by an Administrator.

(i) A "Participant" means a governmental body that procures Goods, Services, or Public Improvements from a Provider based on the Original Contract established by an Administrator in a Cooperative Procurement. For the purpose of the Cooperative Procurement Rules, the procured Services include Architectural, Engineering and Land Surveying Services, and Related Services. A Participant may be the State Procurement Office or, subject to the approval of the State Procurement Office: an Authorized Agency, a local Public Body, a state agency with independence under ORS 279A.050, or a governmental body located outside the State of Oregon. A Participant has the same rights and responsibilities as a Participating or Purchasing Contracting Agency under ORS 279A.200 through 279A.225.

(j) "Permissive Cooperative Procurement" means a Cooperative Procurement in which the Participants are not identified.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.205, 279A.210, 279A.215, 279A.220, 279A.225

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0410

Authority for Cooperative Procurements

(1) The State Procurement Office will enter into Cooperative Procurements on behalf of Agencies, unless an Authorized Agency receives a delegation of authority according to OAR 125-246-0170 to act as an Administrator or Participant.

(2) Subject to a delegation of authority described in section (1) of this Rule, an Administrator or Participant may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and these Rules.

(3) For Permissive Cooperative Procurements under OAR 125-246-0440 and 125-246-0450 only, each Participant that participates after the Award of the Original Contract must determine, in Writing, whether the Solicitation and award process for the Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2). The Participant must maintain this Written determination in the Participant's Procurement File.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.205, 279A.210, 279A.215 & 279A.220

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0420

Responsibilities

(1) The Administrator of a Cooperative Procurement may establish any terms and conditions necessary to allow other Participating Authorized Agencies or Cooperative Procurement Groups of which the Participant is a member (hereinafter collectively known as "Participant"), to participate in a Cooperative Procurement. The Administrator may require Participants to

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enter into a Written agreement that establishes the terms and conditions for participation in a Cooperative Procurement. These terms and conditions may include, but are not limited to: the establishment of any administrative fees for the Administrator, whether each Person must enter into a Written agreement with the Administrator, and any other matters related to the administration of the Cooperative Procurement source selection and the resulting Original Contract. The Administrator may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Participants' compliance with the Code and these Rules.

(2) In administering or applying these Rules, the Administrator must collaboratively review and compare the procurement needs and requirements of both the Administrator and the respective Participant(s) for the purpose of using a Cooperative Procurement to achieve cost savings (for examples: lowest total cost of acquisition, least time to procure, process streamlining, Return on Investment calculation based on a comparison of the total costs of individual Authorized Agency Procurements versus a Cooperative Procurement).

(3) If a Participant enters into a Contract based on a Cooperative Procurement, the Participant must comply with the Code, these Rules, and any terms and conditions set out by the Administrator, including without limitation those sections of the Code and these Rules that govern:

(a) The extent to which the Participant may participate in the Cooperative Procurement;

(b) The advertisement of the Solicitation Document for the Cooperative Procurement; and

(c) Public notice of the Participant's intent to establish Contracts based on a Cooperative Procurement.

(4) An Administrator must use a Solicitation and award process that is substantially equivalent to a source selection method identified in ORS 279B.055, 279B.060, 279B.085, or 279C.005 through 279C.870 when it has the characteristics set forth in ORS 279A.200(2).

(5) Interstate Procurement Solicitations must substantially comply with the public notice requirements for advertising stated in OAR 125-247-0305.

(6) The interval between the first date of notice of a Joint or Permissive Procurement Solicitation must be not less than fourteen (14) Days for an ITB and not less than thirty (30) Days for an RFP. A Joint or Permissive Procurement Solicitation must comply with OAR 125-247-0305.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.205

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0430

Joint Cooperative Procurements

(1) Applicability. An Administrator or Participant may participate in, sponsor, conduct or administer this type of Procurement for the purchase of Supplies and Services or Public Improvements. The Administrator and Participant must comply with the procedures set out in ORS 279A.210 and these Rules to procure Supplies and Services or Public Improvement using a Joint Cooperative Procurement. Only the Participants listed in the Solicitation and Original Contract documents may enter into a Contract through a Joint Cooperative Procurement. A Joint Cooperative Procurement is not a Permissive Cooperative Procurement.

(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for a Joint Cooperative Procurement must include, but are not limited to:

(a) A list of the Participants that may enter into a Contract under the terms and conditions of the Original Contract;

(b) The Original Contract requirements, which may include, but are not limited to:

(A) The Original Contract's not-to-exceed value;

(B) The term of the Original Contract;

(C) The quantity or quantity range of purchases to be made;

(D) The minimum level of quality or quality range requirements for the Supplies and Services;

(E) The minimum Provider qualifications;

(F) The Scope of the Supplies and Services or Public Improvements to be purchased;

(G) Terms and conditions;

(H) Any special considerations; and

(I) Any insurance or bonding requirements.

(c) A Written requirement that the Participant will not Materially Change or alter the terms, conditions, or prices of the Original Contract between the Provider and the Administrator.

(d) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract according to OAR 125-246-0560.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.210

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0440

Permissive Cooperative Procurements

(1) Applicability. An Administrator or Participant may only participate in, sponsor, conduct or administer this type of Cooperative Procurement for the purchase of Supplies and Services. The Administrator and Participant must comply with the procedures set out in ORS 279A.215 and these Rules to procure Supplies and Services using a Permissive Cooperative Procurement. A Permissive Cooperative Procurement is not a Joint Cooperative Procurement.

(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for a Permissive Cooperative Procurement must include, but are not limited to:

(a) A Written requirement that other Participants may establish Contracts to purchase the Supplies or Service;

(b) A Written requirement that the Provider will extend the terms, conditions and prices to any Participant that establishes a Contract through a Permissive Cooperative Procurement;

(c) The Original Contract requirements, which may include, but are not limited to:

(A) The Original Contract's not-to-exceed value;

(B) The term of the Original Contract;

(C) The quantity or quantity range of purchases to be made;

(D) The minimum level of quality or quality range requirements for the Supplies and Services;

(E) The minimum Provider qualifications;

(F) The Scope of the Supplies and Services to be purchased;

(G) Terms and conditions;

(H) Any special considerations; and

(I) Any insurance or bonding requirements.

(d) A Written requirement that the Participant will not Materially Change or Alter the terms, conditions, or prices of the Original Contract between the Provider and the Administrator.

(e) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract according to OAR 125-246-0560.

(3) Public Notice of Intent to establish a Contract; Comment Period.

(a) A Participant that intends to enter into a Contract through a Permissive Cooperative Procurement must publish a notice of its intent to do so if the Participant estimates that it will spend in excess of \$250,000 for the purchase of the Supplies and Services to be acquired under the Contract;

(b) For purposes of determining if a Participant must give a Notice of Intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(a), the estimated amount of the Participant(s)'s purchases will exceed \$250,000 for Supplies and Services if:

(A) The Participant's Contract arising out of the Permissive Cooperative Procurement expressly provides that the Participant intends to make purchases over the term of the Contract that will, in the aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated in the Contract;

(B) The Participant's Contract arising out of the Permissive Cooperative Procurement expressly provides:

(i) For payment, whether in a fixed amount or up to a stated maximum amount that exceeds \$250,000; or

(ii) For a guaranteed maximum price, or a maximum not-to-exceed amount that is in excess of \$250,000; or,

(C) At the time the Participant enters into the Contract, the Participant reasonably contemplates, based on historical or other data available to the Participant, that the total purchases it will make for the Supplies and Services under the Contract will, in the aggregate, exceed \$250,000 over the anticipated duration of the Contract.

(c) The Notice of Intent must contain the following information:

(A) A description of the purchases to be made;

(B) An estimated amount of the purchases;

(C) The name of the Administrator; and,

(D) A time, place and date by which comments must be submitted to the Participant regarding the Notice of Intent to establish a Contract.

(E) The Contract requirements, which may include, but are not limited to:

(i) The Contract's not-to-exceed value;

(ii) The term of the Contract;

(iii) The quantity or quantity range of purchases to be made;

(iv) The minimum level of quality or quality range requirements for the Supplies and Services;

(v) The minimum Provider qualifications;

(vi) The Scope of the Supplies and Services to be purchased;

(vii) Any special considerations;

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- (vii) Terms and conditions; and
- (ix) Any insurance or bonding requirements.

(d) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract according to OAR 125-246-0560.

(e) Any Notice of Intent for a Permissive Cooperative Procurement must be published for no fewer than seven (7) calendar Days before the deadline for submission of comments regarding the Notice of Intent to establish a Contract.

(f) Providers must submit comments within seven (7) calendar Days after the Notice of Intent is published. If the Participant receives comments on its intent to establish a Contract, the Participant must respond to those comments.

(g) To participate in the Permissive Cooperative Procurement after receiving comments, the governing body of the Participant, its chief executive or another officer authorized by the Participant must make a Written determination that establishing a Contract is in the best interest of the Participant. The Participant must provide a copy of the Written determination to all Providers that submitted comments.

(h) The Notice of Intent must appear in the ORPIN system and, at the Participant's option, an additional Notice of Intent may be placed in at least one newspaper of general circulation, and in as many additional issues and publications as may be necessary or desirable to ensure Providers, who would otherwise be prospective Offerors on the Contract, are given an opportunity to comment.

(i) The Participant's Notice of Intent described in this Section and the Administrator's Permissive Cooperative Procurement Solicitation advertisement requirements described in OAR 125-0247-0305 may occur concurrently.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.215

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0450

Interstate Cooperative Procurements

(1) Applicability. An Administrator or Participant may participate in this type of Cooperative Procurement for the purchase of Supplies and Services only if the Solicitation was advertised in Oregon by the Administrator or Participant according to OAR 125-247-0305. The Administrator or Participant must comply with the procedures set out in ORS 279A.220 and these Rules to procure Supplies and Services using an Interstate Cooperative Procurement.

(2) Solicitation and Original Contract Documents. The Solicitation Document and Original Contract for an Interstate Cooperative Procurement must include, but are not limited to:

(a) A Written requirement that other governmental bodies may establish Contracts to purchase the Supplies and Services;

(b) Either:

(A) A list of the Participant(s) that may enter into Contracts under the terms and conditions of the Original Contract, and a Written requirement that the Provider will extend the terms, conditions and prices to these Participants (Listed Participants); or

(B) A Written requirement that the Provider will extend the terms, conditions and prices to any Participant through the Interstate Cooperative Agreement.

(c) The Original Contract requirements, which may include, but are not limited to:

(A) The Original Contract's not-to-exceed value;

(B) The term of the Original Contract;

(C) The quantity or quantity range of purchases to be made;

(D) The minimum level of quality or quality range requirements for the Supplies or Service;

(E) The minimum Provider qualifications;

(F) The Scope of the Supplies and Services to be purchased;

(G) Any special considerations;

(H) Terms and conditions; and

(I) Any insurance and bonding requirements.

(d) A Written requirement that a Participant will not Materially Change or Alter the terms, conditions, or prices of the Original Contract between the Provider and the Administrator.

(e) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract according to OAR 125-246-0560.

(3) Advertisements of Interstate Cooperative Procurements

(a) If the Solicitation Document and Original Contract for an Interstate Cooperative Agreement contain a list of the Participants in accordance with Subsection (2)(b) and at least one of the Participants is an Agency, then the Solicitation Document for that Interstate Cooperative Procurement must be advertised in Oregon. This Solicitation Document is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or 279B.060(4) by:

(A) The Administrator;

(B) The Participant;

(C) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Participant is a member; or

(D) Another Participant that is subject to the Code, so long as the advertisement would, if given by the Participant, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Participant.

(b) A Participant or the Cooperative Procurement Group of which the Participant is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in ORS 279B.055(4)(b) and (c).

(4) Public Notice of Intent to establish a Contract

(a) If a Participant is not listed in accordance with Subsection (2)(b)(A) and intends to enter into a Contract through an Interstate Cooperative Procurement at any time in accordance with Subsection (2)(b)(B), that Participant must publish a Notice of Intent to do so in Oregon.

(b) The Notice of Intent required in accordance with Subsection (4)(a) must appear in the ORPIN system and, at the Participant's option, an additional Notice of Intent may be placed in at least one newspaper of general circulation, and in as many additional issues and publications as may be necessary or desirable to ensure Providers, who would otherwise be prospective Offeror on the Contract, are given an opportunity to comment.

(c) The Notice of Intent must contain the following information:

(A) A description of the purchases to be made;

(B) An estimated amount of the purchases;

(C) The name of the Administrator; and,

(D) A time, place and date by which comments must be submitted to the Participant regarding the Notice of Intent to establish a Contract.

(E) The Contract requirements, which may include, but are not limited to:

(i) The Contract's not-to-exceed value;

(ii) The term of the Contract;

(iii) The quantity or quantity range of purchases to be made;

(iv) The minimum level of quality or quality range requirements for the Supplies and Services;

(v) The minimum Provider qualifications;

(vi) The Scope of the Supplies and Services to be purchased;

(vii) Any special considerations;

(viii) Terms and conditions; and

(ix) Any insurance and bonding requirements.

(d) A Written requirement that Amendments will be generally stated, in Writing, in the Solicitation Document and the Original Contract according to OAR 125-246-0560.

(e) Providers must submit comments within seven (7) calendar Days after the Notice of Intent is published. If the Participant receives comments on its intent to establish a Contract, the Participant must respond to those comments.

(f) To participate in the Permissive Cooperative Procurement after receiving comments, the Participant must make a Written determination that establishing a Contract is in the best interest of the Participant. The Participant must provide a copy of the Written determination to any Provider that submitted comments.

(g) The Participant's Notice of Intent described in this Section and the Administrator's Interstate Cooperative Procurement Solicitation advertisement requirements described in OAR 125-0247-0305 may occur concurrently.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.220

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0460

Protest and Disputes

(1) Protests to an Administrator.

(a) Solicitation. If a prospective Offeror wishes to protest the procurement process or the contents of the original Solicitation of an Original Contract related to a Cooperative Procurement, the prospective Offeror must direct the protest to the Administrator. The Offeror must make the protest according to ORS 279B.405 unless the Administrator is not subject to the Code (see Subsection (c) below).

(b) Award. If an adversely affected Offeror wishes to protest the Award or proposed Award of an Original Contract under a Cooperative Procurement, the Offeror must direct the protest to the Administrator. The Offeror must make the protest according to ORS 279B.410 unless the Administrator is not subject to the Code (see Subsection (c) below).

(c) If the Administrator is not subject to the Code, then the prospective Offeror under Subsection (a) or the Offeror under Subsection (b) must make the protest in accordance with the processes and procedures established by the Administrator.

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(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, must be made and resolved as set forth in ORS 279A.225.

(3) Protests to a Participant. If an Offeror wishes to protest the use by a Participant of a Cooperative Procurement after the execution of an Original Contract, the potential Offeror must direct the protest to the Participant, and the potential Offeror must make such protest according to ORS 279B.400 to 279B.425. The protest to the Participant is limited in Scope to the Participant's authority to enter into a Cooperative Procurement Contract.

(4) Preservation of Rights and Remedies. Failure of an Administrator or Participant to exercise any rights or remedies it has under the Original Contract or Contract entered into through a Cooperative Procurement may not affect the rights or remedies of the any other Participant that participates in the Cooperative Procurement, including the Administrator, and may not prevent any other Participant from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

(5) Other Protests or Disputes. Any other protests related to a Cooperative Procurement, or disputes related to an Original Contract or Contract arising out of a Cooperative Procurement, must be made and resolved as set forth in ORS 279A.225.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.225

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0555

Contract Administration; General Provisions

(1) Authority. Procurements include Contract Administration. The authority for an Authorized Agency to conduct Contract Administration is found in OAR 125-246-0170.

(2) Contract Administrator. The Authorized Agency must appoint, in Writing, a Contract Administrator to represent the Authorized Agency for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract, including communications according to OAR 125-246-0635.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279.065(5), 279.070, 279.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0556

Procurement Files

(1) Application. This Rule applies to Procurement Files, as defined in OAR 125-246-0110.

(2) Required Documentation. All Procurement Files must contain:

(a) All Written documents delivered to an Agency from the Department, Chief Procurement Officer, or State Procurement Office, whether the documents relate to approvals, revocations, orders, modifications, or other actions (Actions), related to the documents' subject matter and Action;

(b) An executed Contract, if awarded, and any Ordering Instruments (collectively, Contract);

(c) The record of the actions used to develop and administer the Contract;

(d) A copy of the Solicitation, if any;

(e) The Contract Administrator and any delegates;

(f) Any required findings or statement of justification for the selection of the Provider and sourcing method according to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Supplies and Services); 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements);

(g) Documentation of Contract Administration according to OAR 125-246-0555 and if required by the selected procurement method:

(A) A list of prospective Providers notified of any Solicitation;

(B) The method used to advertise or notify prospective Providers;

(C) A copy of each Offer that resulted in the Award of a Contract;

(D) The record of any Negotiation of the Statement of Work and results;

(E) A record of all material Communications regarding the Solicitation by interested Providers according to OAR 125-246-0635;

(F) All information describing how the Provider was selected, including the method and basis for awarding the Contract;

(G) A copy of the Request for Special Procurement, if any;

(H) Documentation for a Federal Program purchase according to OAR 125-246-0360; and

(I) Documentation related to Cooperative Procurements according to OAR 125-246-0410 et seq.

(3) Time Period. The Agency must maintain Procurement Files, including all documentation, for a period in compliance with OAR 166-300-0015(7) and any other applicable laws. Procurement Files must be made immediately available for review upon the request of the State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0560

Amendments

(1) Applicability and Definitions. This Rule on Amendments sets forth:

(a) A General Rule for Amendments in Section (2) applicable to Contracts for Supplies and Services according to the Code and these Rules;

(b) Special Rules for Amendments in Sections (3) through (12), applicable to different types of Contracts. These Special Rules replace the General Rule, unless expressly stated otherwise;

(c) A Rule for Transitional and Old Contracts in Section (13), as those Contracts are defined in OAR 125-246-0110; and

(d) Definitions for the purposes of this Rule.

(A) "Anticipated Amendment" means:

(i) The Authorized Agency has stated in the Solicitation Document, if any, and the Original Contract ("Contract") that the Authorized Agency may amend the Contract; and

(ii) Required language in the Solicitation Document, if any, and the Contract includes:

(I) The general circumstances that might require an Anticipated Amendment to be issued under the Contract. "General circumstances" means broad or important aspects of the circumstances and not detailed. "Circumstances" means the anticipated conditions, state of affairs, or context that might require the Amendment. "Anticipated" means considered, realized, foreseen, or expected before its time. "Contract" means the specific Original Contract or class of Original Contracts being amended (specific Contract). This requirement is not satisfied by boilerplate language. "Boilerplate language" means standard language used commonly in documents without variation based upon specific circumstances; and

(II) A general description of certain or known changes to the requirements of the Contract that may be anticipated or planned for, but not necessarily quantified at the time of Contract execution. These changes may be specifically described in any Solicitation and Contract as: Additional Work; Work to be done if certain situations are encountered; or changes in terms, conditions, price, or type of Work. "General description" means broad or important aspects of the certain or known changes and not detailed. "Certain or known changes" that "may be anticipated or planned for" does not mean all possibilities; it means anticipated changes that might be required by the circumstances, as defined in Subsection (d)(A)(ii)(I). This general description of changes must relate to the specific Contract and is not satisfied by boilerplate language, as defined in Subsection (d)(A)(ii)(I).

(iii) The Authorized Agency is not required to designate an Amendment in any Solicitation Document and Original Contract as an "Anticipated Amendment."

(B) "Unanticipated Amendment" means an Amendment that does not otherwise meet the requirements of being an Anticipated Amendment.

(2) General Rule for Amendments.

(a) Authorized Agency may make Amendments to Contracts as set forth in this Rule under the following conditions:

(A) Scope. The Amendment must be within the Scope of the original Solicitation Document, if any, and the Original Contract, in accordance with the definition of an Amendment under OAR 125-246-0110;

(B) Original Contract. The Original Contract was awarded either:

(i) According to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220;

(ii) For Transitional or Old Contracts only, in accordance with Old Rules, as the Contracts and Old Rules are defined in OAR 125-246-0100; or

(iii) Other statutory law.

(C) Legal Requirements. The Amendment is made consistent with applicable legal requirements;

(D) Writing. All Amendments to Contracts must be in Writing;

(E) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before the Amendments will be binding on the Authorized Agency, including but not limited to the Department of Justice legal sufficiency review according to ORS 291.047.

(b) Authority for Anticipated Amendments. An Authorized Agency in accordance with OAR 125-246-0170 may make one or more Anticipated Amendments to a Contract without any additional competitive process and

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for an unlimited amount, in accordance with the definition of an Anticipated Amendment and this Rule.

(c) Authority for Unanticipated Amendments. An Authorized Agency in accordance with OAR 125-246-0170 may make one or more Unanticipated Amendments to a Contract without any additional competitive process, in accordance with the definition of an Unanticipated Amendment and this Rule.

(A) Limited Amount. The cumulative amounts of one or more Unanticipated Amendments to a Contract must not exceed 20% of the Original Contract amount; or

(B) Unlimited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount according to the Authorized Agency's delegated authority under OAR 125-246-0170, the Authorized Agency's Designated Procurement Officer or the Chief Procurement Officer for the State Procurement Office gives Written approval of the Unanticipated Amendment, based upon a determination that:

(i) The change is legitimate and due to unforeseen circumstances which occurred as Work progressed, and that the reasons for the change were unforeseen at the time the Original Contract was established, as opposed to an effort to evade Procurement requirements;

(ii) The Original Contract contains clauses authorizing modification; and

(iii) The Unanticipated Amendment does not represent a material, general change, which alters the essential identity or main purpose of the Original Contract, or is of such importance as to constitute a new undertaking. The approval of the Designated Procurement Officer and the basis of this determination must be documented in the Procurement File according to OAR 125-246-0355.

(3) Special Rules for Amendments Based on Dollar Threshold:

(a) Small Procurements. An Authorized Agency may amend a Contract awarded as a Small Procurement, and the cumulative Amendments must not increase the total Contract Price to exceed \$6,000. The General Rule does not apply to amendments of a Contract awarded as a Small Procurement.

(b) Intermediate Procurements. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-247-0270, and the General Rule on Amendments applies to Intermediate Procurements not exceeding the Threshold of \$150,000. If the Contract and all cumulative Amendments would result in an amended Contract amount exceeding \$150,000, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(c) Formal Procurements. The General Rule on Amendments applies to Procurements according to ORS 279A.200 through 279A.220 (Cooperative Procurement), 279B.055 through 279B.060 (Competitively Sealed Bidding and Proposals) and ORS 279B.085 (Special Procurements), if applicable, except as provided in this Rule.

(4) Special Rule for Amendments of Sole-Source Procurements. The General Rule on Amendments in Section (2) applies to Sole-Source Procurements according to ORS 279B.075 and OAR 125-247-0275.

(5) Special Rule for Amendments of Contracts for Emergencies. Despite Sections (2) through (11), an Authorized Agency may amend a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency.

(6) Special Rule for Reinstatement of Expired Contracts. Despite the General Rule on Amendments in Section (2), the Rule for Reinstatement of Expired Contracts is found at OAR 125-246-0570.

(7) Special Rules for Payment Authorization for Cost Overruns and Retroactive Approvals and Payment Authorization for Cost Overruns for Services Contracts. Despite the General Rule on Amendments in Section (2), the Rules for Retroactive Approvals and Payment Authorization for Cost Overruns are found at OAR 125-246-0575 and 125-246-0576, respectively.

(8) Special Rule for Renegotiated Contracts. Despite the General Rule on Amendments in Section (2), the Special Procurement Rule for Renegotiated Contracts is found at OAR 125-247-0288(3).

(9) Special Rule for Amendments of Contracts for Architectural, Engineering and Land Surveying Services, and Related Services. Despite the General Rule on Amendments in Section (2), the Rule for Amendments of Contracts for Architectural, Engineering and Land Surveying Services, and Related Services is found at OAR 125-248-0340.

(10) Special Rule for Amendments of Contracts for Public Improvements. Despite the General Rule on Amendments in Section (2), the Rule for Amendments of Contracts for Public Improvements is found at OAR 125-249-0160.

(11) Special Rule for Amendments of Price Agreements. Despite the General Rule on Amendments in Section (2), the State Procurement Office or its delegatee may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) As permitted by any applicable Special Rule for Amendments, Sections (3) through (10); or

(c) As permitted by applicable law.

(12) Special Rules for Amendments of Cooperative Procurements.

(a) An Administering Authorized Agency may amend an Original Contract only in accordance with ORS 279A.205 through 279A.225 and in a manner that is substantially equivalent to this Rule.

(b) A Participating Authorized Agency may amend its own Contract resulting from a Cooperative Procurement in a manner that complies with this Rule.

(13) Rule for Amendments of Transitional and Old Contracts.

(a) "Transitional Contracts" and "Old Contracts" are defined in OAR 125-246-0110.

(b) An Authorized Agency must have authority to amend the Transitional or Old Contract in accordance with OAR 125-246-0170, including but not limited to delegations by rule, agreement, letter and policy as described in OAR 125-246-0170(1).

(c) An Authorized Agency may amend a Transitional or Old Contract by complying with one of the following four (4) processes:

(A) New Amendment Process. An Authorized Agency may apply Sections (1) through (9) of this Amendment Rule; or

(B) New Special Procurement Process. An Authorized Agency may amend through the Special Procurement Rules for Supplies and Services, as set forth in OAR 125-247-0285 through 125-247-0287; or

(C) Exclusive Amendment Process. This Process is not available for Personal Services Contracts. An Authorized Agency may amend an Original Contract with a Provider without competitive bidding and for additional Work or product which is reasonably related to the Scope of Work under the Original Contract, including Changes to Work, extra Work, field orders, or other change in the original Specifications that increases the Original Contract price, subject to the following conditions:

(i) The Original Contract:

(I) Was let by a competitive bidding or alternative Procurement process;

(II) Unit prices or additive alternates were provided that established the cost basis for the additional Work or product; and

(III) A binding obligation exists on the parties covering the terms and conditions of the additional Work; or

(ii) The Original Contract was let pursuant to a declaration of emergency, in accordance with former ORS 279.015(4)(a) and 279.015(5) and former OAR 125-310-0030; or

(iii) The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the Original Contract and such regulations or ordinances, as provided in former ORS 279.318, either were not cited in the Original Contract or were enacted or amended after submission of the successful Bid or Proposal; or

(iv) The Original Contract was for the renovation or remodeling of a building.

(v) Except for Amendments entered into pursuant to Subsections (C)(i) to (iv), the aggregate increase resulting from all Amendments to a Contract must not exceed 20 percent of the initial Contract price. Contracts for the renovation or remodeling of buildings may have aggregate Amendments not exceeding 33 percent of the initial Contract price. Provided, however, that Amendments made pursuant to Subsection (C)(i) are not to be applied against either the 20 percent or the 33 percent aggregate limit on Contract Amendments. Provided, further, that Contracts amended pursuant to Subsections (C)(ii) or (iii) are not subject to either the 20 percent or the 33 percent aggregate limit on Contract Amendments.

(vi) If the Original Contract required the Contractor to provide a performance and payment bond, and the Authorized Agency has terminated the Contract and notified the surety of such termination, the Authorized Agency may allow the Contractor's surety an opportunity to provide a substitute Contractor to complete performance of the Original Contract. Such substitute performance, and any Amendment of the Original Contract that makes a substitute Contractor a party to the Contract, and is not an award of a Public Contract for purposes of former ORS 279.015(1), must not be subject to the competitive procurement provisions of former ORS 279.005 through 279.111.

(D) Personal Services Amendment Process. This process is for Personal Services Contracts only.

(i) Contract Amendments must be made in writing.

(ii) Amendments to Contracts must fall within the Scope of the original Solicitation, unless the Original Contract was exempt under former OAR 125-020-0610, including whether the Contract consideration or term limit for performance may be increased (See former OAR 125-020-0310(4)(b)). Amendments may not be used to circumvent rules establishing approvals at certain monetary levels.

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(iii) The State Procurement Office must approve an Amendment to a Contract unless approval of the amended Contract is not required under OAR 125-246-0170.

(iv) Except for Contracts related to Year 2000 services or Phased Development projects, Amendments to perform additional work related to information technology must not exceed 33% of the amount identified in the original Contract.

(v) The Attorney General must approve an amendment to a Personal Services Contract if the resulting Contract requires legal sufficiency review under ORS 291.045.

(vi) The Authorized Agency must provide justification for any increase in time, compensation or other modification to the State Procurement Office.

(vii) A Contract Amendment form(s) will be provided by the State Procurement Office. The Authorized Agency may create Amendment form(s) as long as the Amendment form is approved by the State Procurement Office.

(viii) For Amendments, the Authorized Agency is required to:

(I) Prepare a Contract Amendment;

(II) Obtain necessary approvals before the Amendment is effective; and

(III) Issue the Award justification on ORPIN for Amendments that do not require State Procurement Office approval.

(ix) For Contract Amendments that require State Procurement Office approval, the Authorized Agency must submit the Contract Amendment package (one original and one copy of the Contract Amendment, a copy of the original Contract, copies of any previous Amendment(s), and the justification statement) to the State Procurement Office.

(x) The State Procurement Office will review and approve the Contract Amendment for compliance with applicable rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0570

Reinstatements of Expired Contracts

(1) Reinstatement by the Designated Procurement Officer. If the type or aggregated value (including all amendments) of the Contract after reinstatement falls under the Agency's procurement authority in accordance with OAR 125-246-0170, then the Designated Procurement Officer of this Authorized Agency may reinstate and amend for time only an expired or terminated Contract (collectively, "expired Contract"), if the Authorized Agency meets the following conditions:

(a) Purpose. The reinstatement of the expired Contract is for the following purpose:

(A) Fulfillment of its term, up to the maximum time period provided in the Contract; or

(B) Completion of a deliverable, provided:

(i) The deliverable, including but not limited to Services, Work, Goods, or a Public Improvement project, was defined in the Contract as having a completion date or event; and

(ii) The Authorized Agency documents in the Procurement File what has not been completed, as of the date of the reinstatement of the expired Contract.

(b) Proper Execution. The expired Contract was previously properly executed containing all of the required signatures; and

(c) Unforeseen or Unavoidable Conditions. The failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions.

(2) Reinstatement by the State Procurement Office. If the Agency is not authorized under OAR 125-246-0170, then the State Procurement Office may reinstate and amend for time only an expired Contract, if the Agency submits a written justification to the State Procurement Office, demonstrating the satisfaction of the requirements for reinstatement, as set forth in Subsections (1)(a) through (c) above.

(3) Amendments. The Authorized Agency may amend an expired Contract for time only in accordance with Section (1) of this Rule. The Authorized Agency may amend the Contract for purposes other than time in accordance with OAR 125-246-0560.

(4) When an Authorized Agency reinstates and amends for time an expired Contract according to this Rule, the Authorized Agency may compensate the Provider for Work performed in the interim between the expiration of the Original Contract and effective date of the reinstatement and amendment.

(5) Once a Contract is reinstated, it is in full force and effect, as if it had not expired.

(6) For Architectural, Engineering and Land Surveying and Related Services, the Authorized Agency must follow the Reinstatement Rule set forth in OAR 125-248-0310.

(7) No reinstatement of a Contract may modify the Original Contract, except the Original Contract may be modified with respect to the time for performance and any adjustment in the amount of the Contract as a consequence of the time extension.

(8) If the reinstatement and amendment for time of a Contract according to this Rule requires Attorney General approval under ORS 291.045 and 291.047, the Authorized Agency must obtain approval before the extension becomes binding.

(9) An Authorized Agency may combine in one document a Reinstatement of a Contract in accordance with this Rule, Retroactive Approvals of that Contract in accordance with OAR 125-246-0575, and its Amendment in accordance with OAR 125-246-0560, as needed.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-246-0575

Retroactive Approvals of Existing Contracts

(1) Application. This Rule applies to existing Contracts that must have the approval of the State Procurement Office according to ORS 279ABC or these Rules, including but not limited to Personal Services Contracts and Contracts for Architectural, Engineering and Land Surveying Services or Related Services.

(2) Approval by the State Procurement Office. If the Agency is not authorized under OAR 125-246-0170, then retroactive approval of a Contract means the action of the State Procurement Office, retroactively approving an existing Contract that was not previously properly executed and approved.

(3) Approval by a Designated Procurement Officer. If the Agency is authorized under OAR 125-246-0170, then retroactive approval of a Contract means the action of the Designated Procurement Officer of that Authorized Agency, retroactively approving an existing Contract that was not previously properly executed and approved.

(4) Timing for Payment. This retroactive approval does not apply to payments made for work performed between the start of the Work of the Contract and the date of any retroactive approval (Time Period). The retroactive approval applies to work performed but not paid for, as of the date of approval.

(5) Requirements. Before the State Procurement Office or authorized Designated Procurement Officer may retroactively approve a Contract in accordance with Sections (1) through (3) of this Rule, the requesting Agency must meet the following requirements:

(a) Submit a Written request to the State Procurement Office or Designated Procurement Officer in accordance with Section (2) or (3). The Authorized Agency must also submit a copy of this Written request to the head of that Agency.

(A) If this Written request is submitted to the State Procurement Office in accordance with Section (2), it must be executed by the Authorized Agency's Designated Procurement Officer.

(B) If this Written request is submitted to the Designated Procurement Officer in accordance with Section (3), it must be executed by another individual within the Authorized Agency who is responsible for oversight of the Contract.

(b) The Written request must contain the following information:

(A) An explanation of why the Contract was not submitted for all required approval signatures before performance began, including but not limited to the circumstances that existed that created any need for performance without all of the required approval signatures;

(B) A description of the steps being taken to prevent similar occurrences in the near future; and

(C) A proposed retroactive approval of the Contract;

(c) Obtain all other approvals required for the Public Contract, including the Department of Justice's Legal Sufficiency Ratification of a Public Contract according to OAR 137-045-0090; and

(d) If an internal approval signature of the Contract is lacking, obtain that internal approval signature in accordance with the Authorized Agency's internal policy, if any.

(6) Records. The Authorized Agency must maintain a copy of the retroactively approved Contract and the Authorized Agency's retroactive approval documentation (Records) in its Procurement File. The Authorized Agency must make these Records available to the State Procurement Office upon request.

(7) An Authorized Agency may combine in one document Retroactive Approvals of a Contract in accordance with this Rule, Reinstatement of that Contract in accordance with OAR 125-246-0570, and its Amendment in accordance with OAR 125-246-0560, as needed.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

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125-246-0800

Policy; Applicability; Methods

(1) Policy. A sound and responsive Public Contracting system, according to ORS 279A.015, may include purchasing, selling, and leasing activities. By definition, a Public Contract includes sales and leases by Agencies according to ORS 279.010(x). The policies of ORS 279A.015 apply to public selling and leasing activities.

(2) Applicability. This Rule applies to the sales and leases of Supplies and Services. This Rule does not apply to residential property or the public selling activity of Agencies specifically exempted from the Public Contracting Code by another provision of law or specifically authorized to conduct public selling or leasing activity by another provision of law. The sale or lease of Supplies and Services includes but is not limited to: concessions, software rights, and personal property.

(3) Methods. Agencies must use a method, as feasible for selling or leasing, according to ORS 279B.055 through 279B.085. For the sale of Goods, the value of the sale transactions for the purpose of selecting the appropriate sourcing method must be based on the gross amount of receipts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.010(x), 279A.015, 279A.050(1)(2), 279A.065(5)(a) & 279A.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0010

Policies

(1) ORS Chapter 279B and this Division 247 apply the policies of ORS 279A.015 to the Procurement of Supplies and Services. The seven sourcing methods for procurement, procedures, and legal remedies set forth in ORS Chapter 279B and these Rules simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards. ORS Chapter 279B and this Division 247 provide a Public Contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, according to ORS 279A.015(6).

(2) Specific procedures accompany each method, followed by a Section of general procedures. Authorized Agencies must comply with both the specific procedures of a method and general procedures.

(3) The responsibility of the Designated Procurement Officer and any delegatee of an Authorized Agency is to choose the appropriate sourcing methods in accordance with the Code, Rules, and policy, and arrive at offers that represent optimal value to the Agency and the State.

(4) Meaningful competition can be achieved through various strategies and sourcing methods when procuring Supplies and Services, and this competition must be reasonably calculated and demonstrated to satisfy the Authorized Agency's and the State's needs.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.010

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0100

Applicability

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 247 take precedence over the more general requirements of the Rules in Division 246.

(2) The Rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 247 of the Rules specifically addresses matters covered in ORS Chapter 279B.

(3) These Division 247 Rules become effective on March 1, 2005 and apply only to the above-described Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0170

Life Cycle Costing

(1) Policy. Life Cycle Costing provides an acquisition method that is consistent with the concept of sustainability as defined in ORS 184.421 and also drives the concept of lowest cost of ownership and best value of the products and equipment (Goods) purchased. When planning the award method of an Invitation to Bid or Request for Proposal for Goods, an Agency must consider using Life Cycle Costing whenever the costs of system operation, support, and disposal, and other quantifiable costs are significant in comparison with the cost of acquisition.

(2) Definitions:

(a) "Life-Cycle Cost" means the total cost to the State of acquiring, operating, supporting and (if applicable) disposing of the Goods being acquired.

(b) "Life Cycle Costing" means the various quantifiable cost factors, in addition to the acquisition cost of Goods and related Services.

(3) Concept. The concept of Life Cycle Costing begins with the acquisition of the Goods, and includes all the associated costs of ownership, such as purchase price, shipping, maintenance and repair, longevity, and disposition costs at the end of life. The initial acquisition price is adjusted with additional cost streams expected to occur over the anticipated life of the product or equipment. These additional cost streams must be clearly thought out costs or adjustments, based on reasonable assumptions. Cost streams are discrete elements of costs that relate to the particular purchase considered for Life Cycle Costing. In some cases cost streams may include negative costs or savings that are expected to result in a particular cost stream.

(a) Acquisition costs are costs associated with acquiring an item for State use. For complex items, several Contracts may be required and costs may involve research and development as well as production, delivery, and installation of the item.

(b) Typical cost streams may include the following:

(A) Switching costs are costs associated with changing from current Goods to another model or brand of Goods. Typically such costs may include: removal, shipping, training, replacement of supporting Goods, and related Services. The Agency may also consider increased project management or additional transition time.

(B) Operating and support costs are all costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(C) Disposal costs are costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life-Cycle Cost should also consider any significant salvage or resale value at the time of disposal. Oregon Property Services may help with estimating values, and with adherence to current Rules regarding disposition of State property.

(4) Solicitation Requirements. Life Cycle Cost methodology is permitted under this Rule for use in an ITB, an RFP, an Intermediate Procurement, or a Special Procurement as described in this Division 247. When conducting a Life Cycle Costing-based award, the Solicitation must:

(a) Advise prospective Offerors how Life Cycle Costing will be considered in an award decision.

(A) Awards may be made based on lowest evaluated cost resulting from Life Cycle Costing. Under this approach the evaluation includes Life Cycle Costs in the Solicitation issued by the Agency.

(B) Awards of Invitations to Bid to the lowest Bidder include the total Life Cycle Costs as a part of the bid evaluation methodology and award. The lowest total Life Cycle Cost is considered the low Bid.

(C) Awards of RFPs may include a Life Cycle Costing award factor in two ways:

(i) The RFP may include Life Cycle Costs as a part of the total points awarded for costs. In this method, all Life Cycle Costs are calculated and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the RFP; or

(ii) The RFP may include a separate Life Cycle Cost Factor that is assessed a weight or points and is considered in addition to other factors in the proposal evaluation methodology. As a separate evaluation factor, it may be used in addition to costs, when the cost factor does not consider Life Cycle Costing elements.

(b) When Life Cycle Costs continue over a period of years, Solicitations may provide for adjustments to the cost stream for one or more of the following:

(A) Time value of money;

(B) Cost uncertainty; or

(C) Inflation factors.

(5) Factors in the Solicitation. To the extent the Authorized Agency considers practical, the Solicitation must provide relevant information (e.g., projected item usage, operating environment, the operating period, and other information that will be considered in the evaluation of the Offer.) An Agency may include projections and estimates of life and cycle times from independent third party sources. The Solicitation must describe how Life Cycle Cost will be applied in the award process. For one-step Solicitations, factors not described in the Solicitation may not be used in the evaluation. For Multistep and multi-round Solicitations, factors must be described in advance of the evaluation in order to be used in the evaluation.

(6) Elements that may be used in Awards. Solicitations must describe what elements the Offeror will be required to provide in the Offer, including relevant costs, along with appropriate information to support life costs. Typical elements used in Life Cycle Costing Awards may include:

(a) Average unit price, including (when appropriate) recurring and nonrecurring production costs;

(b) Delivery, shipping and transportation costs;

(c) Switching costs prepared by the State that include a reasonable estimate of what it will cost to switch from a current product or brand to another;

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- (d) Unit operating and support costs (e.g., manpower, energy, parts requirements, scheduled maintenance, and training);
- (e) Unit disposal costs (e.g., the cost of removing equipment from the State facility);
- (f) Unit salvage or residual value; and
- (g) Related information as requested to support costs such as testing and operational data.

(7) Award Decision.

(a) Award of an Invitation to Bid using Life Cycle Cost methods must be made to the Responsible Offeror whose Responsive Offer provides the lowest overall cost of ownership in accordance with the Life Cycle Cost evaluation factors listed in the Solicitation Document.

(b) In the case of a Life Cycle Cost Request for Proposal, award must be made to the Responsible Offeror whose Responsive Offer, after consideration of Life Cycle Cost factors as a part of price evaluation, and other factors listed in the Solicitation Document are determined to be the most Advantageous or best Proposal for the State.

(c) In the case of an Intermediate or Special Procurement, the award requirements are the same as found in these methods, and Life Cycle Costing is incorporated into the methods.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0200

Methods of Source Selection

An Authorized Agency must award a Contract for Supplies and Services by one of the following seven sourcing methods in accordance with the Code and related Rules:

- (1) Competitive Sealed Bidding according to ORS 279B.055;
- (2) Competitive Sealed Proposals according to ORS 279B.060;
- (3) Small Procurement according to ORS 279B.065;
- (4) Intermediate Procurement according to ORS 279B.070;
- (5) Sole-Source Procurement according to ORS 279B.075;
- (6) Emergency Procurement according to ORS 279B.080; or
- (7) Special Procurement according to ORS 279B.085.

A Cooperative Procurement in accordance with OAR 125-246-0400 through 125-246-0470 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0255

Competitive Sealed Bidding; One Step Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a Competitive Sealed Bidding Solicitation and must contain the information required by ORS 279B.055(2) and by Section (2) of this Rule. The Authorized Agency must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(3));

(G) How the Authorized Agency will notify Bidders of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-247-0430); and

(H) The requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(b) Authorized Agency Need. The character of the Supplies and Services the Authorized Agency is purchasing including, if applicable, a

description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Bidding and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Authorized Agency must set forth objective evaluation criteria in the Solicitation Document; and

(C) If the Authorized Agency intends to award Contracts to more than one Bidder according to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(d) Applicable Preferences according to ORS 279B.055(6)(b):

(A) Preference for Oregon Supplies and Services, according to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, according to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, according to ORS 282.210.

(e) Certification if Required. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) Terms and Conditions. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Supplies and Services without prior Written approval from the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0256

Competitive Sealed Bidding; Multistep Solicitations

(1) Generally. In addition to the general requirements of OAR 125-247-0255, an Authorized Agency may procure Supplies and Services by using one of the following methods of selection for Multistep Sealed Bidding according to ORS 279B.055(12):

(a) Multistep Invitation to Bid; or

(b) Revised Rounds of Bidding. A step and a round have the same meaning for purposes of implementing ORS 279B.055(12). All of the methods described in ORS 279B.055(12) and this Rule may be collectively referred to in Division 247 as a "Multistep Sealed Bidding."

(2)(a) Multistep Invitation to Bid. A Multistep Invitation to Bid is a phased procurement process that seeks necessary information or unpriced submittals in Phase One, followed by a Phase Two of competitive sealed bidding, inviting Bidders who submitted eligible Bids in Phase One to submit competitive sealed price Bids on the unpriced submittals in Phase Two. The Authorized Agency initially issues a Multistep Invitation to Bid, requesting the submission of unpriced submittals. This Phase One may include multiple steps, at the discretion of the Authorized Agency, in order to obtain necessary information or unpriced submittals. At the conclusion of Phase One, the Authorized Agency evaluates those unpriced submittals to determine the eligibility of the Bidders to submit priced Bids. After this determination, the Authorized Agency may begin Phase Two by issuing subsequent Invitations to Bid, limited to those Bidders eligible to submit priced Bids. The Contract must be awarded to the lowest Responsible Bidder or to multiple Responsible Bidders in accordance with ORS 279B.055(10). (b) Public Notice. Whenever an Authorized Agency uses a Multistep Invitation to Bid, the Authorized Agency must give public notice for Phase One in accordance with OAR 125-247-0305. Public notice is not required for subsequent steps in Phase One, unless a step in Phase One expands the number of Bidders, and then public notice is required. Public notice is not required for Phase Two. However, an Authorized Agency must give notice to all Bidders from Phase One (Bidders). If an Authorized Agency elects to provide a protest opportunity for Addenda issued after the Closing of Phase One according to OAR 125-247-0430, then the Authorized Agency must give notice to the Bidders of this right to protest such Addenda. If an Authorized Agency elects to provide an opportunity to protest exclusion from Phase Two according to OAR 125-247-0720, then the Authorized Agency must give notice to the Bidders of this right to protest such exclusion.

(c) Procedures Generally. In addition to the procedures set forth in OAR 125-247-0300 through 125-247-0490, an Authorized Agency must employ the following procedures set forth in this Section (2) from Multistep ITB:

(A) Solicitation Protest. Prior to the Closing of Phase One, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(B) Addenda Protest. An Authorized Agency may provide an opportunity to protest any Addenda issued after closing of Phase Two according to OAR 125-247-0430(3)(b).

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(C) Exclusion Protest. An Authorized Agency may provide an opportunity for a Bidder to protest exclusion from Phase Two as set forth in OAR 125-247-0720.

(D) Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Bidder from a Phase Two to the extent such protests are provided for in the Solicitation Document or required by this Section (2). Failure to so protest must be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the Authorized Agency.

(E) Award Protest. An Authorized Agency must provide an opportunity to protest its intent to award a Contract according to ORS 279B.410 and OAR 125-247-0740. An Affected Bidder may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from Phase Two or an Addendum issued following Closing of Phase One if the Authorized Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(d) Procedure for Phase One.

(A) Form. Authorized Agency must initiate a Multistep Invitation to Bid by the issuance of an Invitation to Bid in the form and manner required for Competitive Sealed Bidding, except as hereinafter provided. In addition to the requirements set forth in OAR 125-247-0255(1 and 2), the Invitation to Bid must state:

(i) That unpriced submittals are requested;

(ii) Whether price Bids are to be submitted at the same time as unpriced submittals; if they are, that such price Bids must be submitted in a separate sealed envelope;

(iii) That the Solicitation is a multistep Invitation to Bid, and priced Bids will be considered only in Phase Two and only from those Bidders whose unpriced submittals are found eligible in Phase One;

(iv) The criteria to be used in the evaluation of unpriced submittals;

(v) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced submittals;

(vi) That the Supplies and Services being procured must be furnished generally in accordance with the Bidder's unpriced submittal as found to be finally eligible and must meet the requirements of the Invitation to Bid; and

(vii) Whether Bidders excluded from Phase Two have a right to protest the exclusion before the notice of intent to award. Such information must be given in the Bid Solicitation or changed by Addenda.

(B) Addenda to the Invitation to Bid. After receipt of unpriced submittals in Phase One, Addenda to the Invitation to Bid must be distributed only to Bidders who submitted unpriced submittals.

(C) Receipt and Handling of Unpriced Submittals. Unpriced submittals in Phase One need not be opened publicly.

(D) Evaluation of Unpriced Submittals. Unpriced submittals submitted by Bidders in Phase One must be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Unpriced submittals must be categorized as:

(i) Eligible;

(ii) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(iii) Ineligible. The Authorized Agency must record in Writing the basis for determining an unpriced submittal ineligible and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate the Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient eligible unpriced submittals to assure effective price competition in Phase Two without Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Invitation to Bid or engage in Discussions as set forth in Subsection (2)(e) of this Rule.

(E) Discussion of Unpriced Submittals. The Authorized Agency may seek clarification of an unpriced submittal by any eligible or potentially eligible Bidder. During the course of such Discussions, the Authorized Agency may not disclose any information derived from one unpriced submittal to any other Bidder. Once Discussions have begun, any Bidder who has not been notified that its unpriced submittal has been finally found ineligible, may submit supplemental information amending its unpriced submittal, at any time until the Closing of the Phase Two. Such submission may be made at the request of the Authorized Agency or upon the Bidder's own initiative.

(F) Notice of Ineligible Unpriced Submittal. When the Authorized Agency determines a Bidder's unpriced submittal to be ineligible, such Bidder may not be afforded an additional opportunity to supplement its unpriced submittal.

(G) Mistakes during a Multistep Invitation to Bid. Mistakes may be corrected or unpriced submittals may be withdrawn during Phase One in accordance with OAR 125-247-0470 and:

(i) Before unpriced submittals are considered;

(ii) After any Discussions have commenced under Subsection (2)(e);

or

(iii) When responding to any Addenda of the Invitation to Bid.

(H) Revisions to Solicitation Specifications. After the Closing of Phase One, the Authorized Agency may issue Addenda that modify the Specifications, references, and other terms and conditions of the Invitation to Bid. The Authorized Agency must provide such Addenda to all Bidders who initially submitted Unpriced Submittals. The Authorized Agency may then require Bidders to submit revised Unpriced Submittals.

(e) Procedure for Phase Two of Multistep Sealed Bidding.

(A) Initiation. Upon the completion of Phase One, the Authorized Agency must invite each eligible Bidder to submit a price Bid.

(B) Conduct. An Authorized Agency must conduct Phase Two as any other Competitive Sealed Bidding Procurement except:

(i) As specifically set forth in this Rule; and

(ii) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

(3)(a) Revised Rounds of Bidding. Revised Rounds of Bidding means a process that begins with an initial round of Competitive Sealed Bidding according to OAR 125-247-0255 and may, at the discretion of the Authorized Agency, include successive rounds of Bidding in order for the Authorized Agency to gain the best Offer for purposes of Award. An Authorized Agency may revise the Solicitation's Specifications, terms and conditions, and pricing structure for successive rounds to best meet the State's needs. Bidders will be allowed adequate time to revise and resubmit their Bids in accordance with the requirements set forth in the newly revised Solicitation Document. At each successive round, Authorized Agency may disregard its scoring of prior Bids and commence new scoring for the new Bids. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(b) Revisions. An Authorized Agency may reject any Bid, after any round, because the Bid did not meet a minimum score or minimum set of requirements. An Authorized Agency may then proceed with a subsequent round that requires additional Bids to be submitted, based on different Specifications, terms and conditions, pricing structure, scoring model, references and set of award criteria, separately or in any combination thereof, in order to best meet the State's interests (Revisions). If any Revision is made by an Authorized Agency in any subsequent round, the Authorized Agency has the right, in its sole discretion, to permit any Bidder whose Bid was previously rejected to submit a new Bid, if the reason(s) for the rejection of the prior Bid by that Bidder no longer applies.

(c) Public Notice. An Authorized Agency must give public notice according to OAR 125-247-0305. The initial Solicitation Document must disclose that a Revised Rounds of Bidding process will or may be used. An Authorized Agency must give notice to all initial Bidders of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and set of award criteria, separately or in any combination thereof. If an Authorized Agency discloses any prices, terms or conditions offered by other Bidders, the Authorized Agency will give notice of these disclosures to the initial Bidders. At the end of the process, the Authorized Agency must give a Notice of Intent to award at least seven (7) calendar Days prior to making the Award. Following clarifications and additional investigations, an Offeror may be reinstated or disqualified at any stage of the evaluation process.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0260

Competitive Sealed Proposals; One Step Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services and negotiate by Competitive Sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a Competitive Sealed Proposals Solicitation and must contain the information required by ORS 279B.060(2) and by Section (2) of this Rule. The Authorized Agency must provide public notice of the Competitive Sealed Proposals as set forth in OAR 125-247-0305.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

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(E) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(3)); and

(F) How the Authorized Agency will notify Proposers of Addenda and how the Authorized Agency will make Addenda available. (See OAR 125-247-0430).

(b) Authorized Agency Need. The character of the Supplies and Services the Authorized Agency is purchasing, including if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Proposal and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Authorized Agency must set forth selection criteria in the Solicitation Document. Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates of actual future costs based on information available to the Authorized Agency;

(C) If the Authorized Agency's solicitation process calls for the Authorized Agency to establish a Competitive Range, the Authorized Agency must state the size of the Competitive Range in the Solicitation Document. The Authorized Agency may increase or decrease the number of the Proposers in the Competitive Range in accordance with OAR 125-247-0261(2); and

(D) If the Authorized Agency intends to award Contracts to more than one Proposer according to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(E) If the Authorized Agency's solicitation process provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the RFP for the anticipated interview.

(d) Applicable Preferences described in ORS 279A.120, 279A.125(2) and 282.210:

(A) Preference for Oregon Supplies and Services, according to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, according to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, according to ORS 282.210.

(e) Certification if requested. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) Terms and conditions. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Supplies and Services without prior Written approval from the Authorized Agency.

(3) Negotiations.

(a) Conducting Negotiations. The Authorized Agency may negotiate serially with the highest-ranked eligible Proposer or simultaneously with all eligible Proposers as follows:

(A) After an initial determination of which Proposals are Responsive;

(B) After an initial determination of the Competitive Range in accordance with this Rule; or

(C) After conclusion of Discussions with all eligible Proposers and evaluation of revised Proposals.

(b) Scope. The Authorized Agency may negotiate:

(A) The statement of work;

(B) The Contract Price as it is affected by negotiating the statement of work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto. Accordingly, the Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto.

(c) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) Continuing Serial Negotiations. If the Authorized Agency is conducting serial Negotiations and the Authorized Agency terminates Negotiations with a Proposer in accordance with this Rule, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has determined either:

(A) To award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Has completed one step of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

(e) Competitive Simultaneous Negotiations. If the Authorized Agency chooses to conduct competitive Negotiations, the Authorized Agency may negotiate simultaneously with competing Proposers. The Authorized Agency:

(A) Must treat all Proposers fairly and must not favor any Proposer over another;

(B) Must only disclose other Proposer's Proposals or the substance of Negotiations with other Proposers if the Authorized Agency notifies all of the Proposers with whom the Authorized Agency will engage in Negotiations before engaging in Negotiations with any Proposer; and

(C) Any oral modification of a Proposal resulting from Negotiations under this Section must be reduced to Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0261

Competitive Sealed Proposals; Multistep Solicitations

(1) Generally. In addition to the general requirements of OAR 125-247-0260, an Authorized Agency may procure Supplies and Services by using any combination of the following methods for Competitive Sealed Proposals according to ORS 279B.060(6)(b).

(a) Competitive Range;

(b) Discussions and Revised Proposals;

(c) Best and Final Offers;

(d) Multistep Proposals;

(e) Revised Rounds of Negotiations; and

(f) Negotiations.

An Authorized Agency may also use a Request for Qualifications according to OAR 125-247-0550 in combination with any of the methods described in ORS 279B.060(6)(b) and this Rule. All of the methods described in ORS 279B.060(6)(b) and this Rule may be collectively referred to in Division 247 as "Multistep Sealed Proposals." A "step," "tier" and "round" have the same meaning for purposes of implementing ORS 279B.060.

(2) Competitive Range. When an Authorized Agency's solicitation process conducted according to ORS 279B.060(6)(b) calls for the Authorized Agency to establish a Competitive Range at any stage in the Procurement Process, the Authorized Agency must comply with the following procedures:

(a) Determining Competitive Range:

(A) The Authorized Agency must establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency must determine and rank the Proposers in the Competitive Range.

(B) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(b) Contesting Competitive Range. The Authorized Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. An Authorized Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-247-0720.

(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with Subsection (2)(b) expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

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(A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range;

(i) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-247-0740 and ORS 279B.410.

(ii) After the protest period provided in accordance with OAR 125-247-0740 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence Negotiations in accordance with this Rule with Proposers in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in this Rule and following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations as set forth in this Rule with the Proposers in the Competitive Range.

(3) Discussions and Revised Proposals. If an Authorized Agency chooses to use the Competitive Range method and then enter into Discussions, the Authorized Agency must proceed as follows:

(a) Initiating Discussions. If the Authorized Agency initiates any Discussion, the Authorized Agency must initiate oral or Written Discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the Authorized Agency identified in the RFP as the subject of Discussions. The Authorized Agency may conduct Discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Authorized Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Authorized Agency may conduct Discussions with each eligible Proposer necessary to fulfill the purposes of this Section (3), but need not conduct the same amount of Discussions with each eligible Proposer. The Authorized Agency may terminate Discussions with any eligible Proposer at any time. However, the Authorized Agency must offer all eligible Proposers the same opportunity to discuss their Proposals with the Authorized Agency before the Authorized Agency notifies eligible Proposers of the date and time according to Section (4) that best and final Proposals will be due.

(A) In conducting Discussions, the Authorized Agency:

(i) Must treat all eligible Proposers fairly and may not favor any eligible Proposer over another;

(ii) Must only disclose other eligible Proposer's Proposals or Discussions in accordance with 279B.060(6)(b) (B) or (C);

(iii) May adjust the evaluation of a Proposal as a result of a Discussion under this Section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the Discussions provided the changes are within the Scope of the Request for Proposals.

(B) At any time during the time allowed for Discussions, the Authorized Agency may:

(i) Continue Discussions with a particular eligible Proposer;

(ii) Terminate Discussions with a particular eligible Proposer and continue Discussions with other eligible Proposers; or

(iii) Conclude Discussions with all remaining eligible Proposers and provide notice according to this Rule to the eligible Proposers.

(4) Best and Final Offers. If an Authorized Agency chooses to require Best and Final Offers, an Authorized Agency must establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers must be submitted only once; provided, however, the Authorized Agency may make a Written determination that it is in the Authorized Agency's best interest to conduct additional Discussions and Negotiations or change the Authorized Agency's requirements and require another submission of best and final Offers. Otherwise, no Discussion of or changes in the best and final Offers may be allowed prior to award. Proposers must also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best and final Offer. The Authorized Agency must evaluate Offers as modified by the best and final Offer. The Authorized Agency must conduct evaluations conducted as described in OAR 125-247-0600. The Authorized Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(5) Multistep Sealed Proposals

(a) Process. The Multistep Sealed Proposals process is a phased procurement process that seeks necessary information or unpriced submittals in Phase One and invites Proposers who submitted qualified unpriced submittals in Phase One to submit competitive sealed price Proposals in Phase Two. The Contract must be awarded to the Responsible Proposer, or in the case of multiple awards, the Responsible Proposers according to ORS

279B.060(10), submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to Phase Two. A "Phase" may include one or more "steps"

(b) Public Notice. Whenever an Authorized Agency uses Multistep Proposals, the Authorized Agency must give Public Notice in accordance with OAR 125-247-0305. Public Notice is not required for Phase Two. However, an Authorized Agency must give notice to all Proposers from Phase One (Proposers). If an Authorized Agency elects to provide a protest opportunity for Addenda issued after the Closing of Phase One according to OAR 125-247-0430, then the Authorized Agency must give notice to the Proposers of this right to protest such Addenda. If an Authorized Agency elects to provide an opportunity to protest exclusion from Phase Two according to OAR 125-247-0720, then the Authorized Agency must give notice to the Proposers of this right to protest such exclusion.

(c) Procedures Generally. In addition to the procedures set forth in OAR 125-247-0300 through OAR 125-247-0490, an Authorized Agency must employ the following procedures set forth in this Section for Multistep Sealed Proposals:

(A) Solicitation Protest. Prior to the Closing of Phase One, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(B) Addenda Protest. An Authorized Agency may provide an opportunity to protest any Addenda issued after closing of Phase Two according to OAR 125-247-0430(3)(b).

(C) Exclusion Protest. An Authorized Agency may provide an opportunity for a Proposer to protest exclusion from Phase Two as set forth in OAR 125-247-0720.

(D) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Proposer from a Phase Two to the extent such protests are provided for in the Solicitation Document or required by this Section. Failure to so protest must be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Authorized Agency.

(E) Award Protest. An Authorized Agency must provide an opportunity to protest its intent to award a Contract according to ORS 279B.410 and OAR 125-247-0740. An Affected Proposer may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from Phase Two or an Addendum issued following Closing of Phase One if the Authorized Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(d) Procedure for Phase One.

(A) The Form of the Request for Proposals. Multistep Proposals must be initiated by the issuance of a Request for Proposal in the form and manner required for Competitive Sealed Proposals in accordance with OAR 125-247-0260, except as provided in this Rule. In addition to the requirements set forth in OAR 125-247-0260(2), this Request for Proposal must state:

(i) That unpriced submittals are requested;

(ii) That the Solicitation is a unpriced submittal Procurement, and priced Proposals will be considered only in Phase Two and only from those Proposers whose unpriced submittals are found acceptable in Phase One;

(iii) The criteria to be used in the evaluation of unpriced submittals;

(iv) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced submittals;

(v) That the Supplies and Services being procured must be furnished generally in accordance with the Proposer's unpriced submittals as found to be finally qualified and must meet the requirements of the Request for Proposals;

(vi) Whether Proposers excluded from subsequent steps or Phase Two have a right to protest the exclusion. Such information must be given in the Solicitation or changed by Addenda; and

(vii) If time is a factor, the Authorized Agency may require Proposers to submit a separate sealed price Proposal during Phase One to be opened after the evaluation of unpriced submittals.

(B) Addenda to the Request for Proposal. After receipt of unpriced submittals in Phase One, Addenda to the Request for Proposal must be distributed only to those Proposers who submitted unpriced submittals.

(C) Receipt and Handling of Unpriced Proposals. The Authorized Agency is not required to publicly open unpriced submittals.

(D) Evaluation of Unpriced Proposals. The unpriced submittals submitted by Proposers must be evaluated solely in accordance with the criteria set forth in the Request for Proposals. The unpriced submittals must be categorized as:

(i) Qualified;

(ii) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(iii) Unqualified. The Authorized Agency must record in Writing the basis for determining a Proposal unqualified and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized

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Agency may initiate Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient qualified unpriced submittals to assure effective price competition in Phase Two without Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Request for Proposals or engage in Discussions as set forth in this Rule.

(E) Discussion of Unpriced Submittals. The Authorized Agency may seek clarification of any Proposal of any Proposer who submits a qualified, or potentially qualified unpriced submittal. During the course of such Discussions, the Authorized Agency may not disclose any information derived from one unpriced submittal to any other Proposer. Once Discussions begin, any Proposer may submit supplemental information amending the unpriced submittal at any time until the Closing of Phase Two set by the Authorized Agency. A submission may be in response to a request of the Authorized Agency or be initiated by the Proposer.

(F) Notice of Unqualified Unpriced Submittals. When the Authorized Agency determines a Proposer's unpriced submittal to be unqualified, such Proposer must not be afforded an additional opportunity to supplement its unpriced submittal.

(G) Mistakes during Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during Phase One:

- (i) Before unpriced submittals are considered;
- (ii) After any Discussions have commenced under this Rule;
- (iii) When responding to any Addenda of the Request for Proposals;

or

- (iv) In accordance with OAR 125-247-0470.

- (e) Procedure for Phase Two.

(A) Initiation. Upon the completion of Phase One, the Authorized Agency must invite each qualified Proposer to submit price Proposals.

(B) Conduct. An Authorized Agency must conduct Phase Two as any other Competitive Sealed Proposal according to OAR 125-247-0260, except:

- (i) As specifically set forth in this Rule; and

(ii) No public notice need be given of the request to submit price Proposals because such notice was previously given.

(6) Revised Rounds of Negotiations Multistep Revised Negotiations means a process that begins with the standard Solicitation procedures for an RFP and may include successive rounds of Proposals achieved through Negotiations to gain the best Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination thereof. The Authorized Agency must treat all Proposers fairly. Before the start of each round of Negotiations, the Authorized Agency must disclose the parameters of that round of Negotiations. At that time, the Authorized Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive round, the Authorized Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Authorized Agency may eliminate any Proposal after a round because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a subsequent round that requires additional Proposals based on the Revision(s). If any Revision is made by the Authorized Agency in any subsequent round, the Authorized Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal by that Proposer no longer applies. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

- (7) Negotiations.

(a) The Authorized Agency may negotiate serially with the highest-ranked eligible Proposer or simultaneously with all eligible Proposers as follows:

- (A) After an initial determination of which Proposals are Responsive;

(B) After an initial determination of the Competitive Range in accordance with this Rule; or

(C) After conclusion of Discussions with all eligible Proposers and evaluation of revised Proposals.

- (b) Conducting Negotiations.

- (c) Scope. The Authorized Agency may negotiate:

- (A) The statement of work;

(B) The Contract Price as it is affected by negotiating the statement of work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto. Accordingly, the Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto.

(d) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

- (A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(e) Continuing Serial Negotiations. If the Authorized Agency is conducting serial Negotiations and the Authorized Agency terminates Negotiations with a Proposer in accordance with this Rule, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has determined either:

(A) To award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Has completed one step of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

(f) Competitive Simultaneous Negotiations. If the Authorized Agency chooses to conduct competitive Negotiations, the Authorized Agency may negotiate simultaneously with competing Proposers. The Authorized Agency:

(A) Must treat all Proposers fairly and must not favor any Proposer over another;

(B) Must only disclose other Proposer's Proposals or the substance of Negotiations with other Proposers if the Authorized Agency notifies all of the Proposers with whom the Authorized Agency will engage in Negotiations before engaging in Negotiations with any Proposer; and

(C) Any oral modification of a Proposal resulting from Negotiations under this Section must be reduced to Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0265

Small Procurements

(1) Generally. For Procurements of Supplies and Services less than or equal to \$5,000 an Authorized Agency may award a Contract as a Small Procurement according to ORS 279B.065 and in accordance with these Rules.

(2) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, according to ORS 279B.065(2).

(3) Amendments. An Authorized Agency may amend a Contract awarded as a Small Procurement in accordance OAR 125-246-0560.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0270

Intermediate Procurements

(1) Generally. For Procurements of Supplies and Services greater than \$5,000 and less than or equal to \$150,000, an Authorized Agency may award a Contract as an Intermediate Procurement according to ORS 279B.070. Authorized Agencies must procure Intermediate Procurements for Supplies and Services in accordance with ORS 279A and 279B.070.

(a) Informal Solicitation. When conducting an Intermediate Procurement, an Authorized Agency must seek at least three informally solicited competitive price Quotes, Bids or Proposals from prospective Offerors. An Intermediate Procurement may be called an informal request for quotes, informal invitation to bid, or informal request for proposals.

(b) Written Record. The Authorized Agency must keep a written record of the sources of the Quotes, Bids or Proposals received. If three Quotes, Bids or Proposals are not reasonably available, fewer will suffice, but the Authorized Agency must make a written record of the effort made to obtain the Quotes, Bids or Proposals.

(c) Award. If a Contract is awarded, the Authorized Agency must award the Contract to the Offeror whose Quote, Bid or Proposal will best serve the interests of the Authorized Agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under ORS 279B.110.

(2) Written Solicitation. For Intermediate Procurements from \$5,000 to \$100,000, Authorized Agencies are not required to use a Written Solicitation, but if an Agency's Designated Procurement Officer requires a Written Solicitation, then the requirements of this Section (2) apply. For Intermediate Procurements exceeding \$100,000 and up to \$150,000,

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Authorized Agencies must use a Written Solicitation. The Written Solicitation must include fair, efficient, competitive Award evaluation criteria. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency. The process, potential revisions to the Solicitation, if any, and opportunity for protests, if any, must be disclosed in the Solicitation. Authorized Agencies must document:

- (a) The Agency's methodology under this subsection (2),
- (b) The Agency's compliance with legal sufficiency review requirements of the Attorney General under ORS 291.047; and
- (c) Communications between the Agency and Providers regarding:
 - (A) The subject matter of OAR 125-246-0635 and ORS 279B.210;
 - (B) Offers;
 - (C) The Award; and
 - (D) Protests, if a protest opportunity is provided by the Agency, at its discretion.

(3) Borderline Procurements. If an Authorized Agency's Designated Procurement Officer or delegatee (DPO) in good faith estimated that the Procurement would be equal to or less than \$100,000, and learned thereafter that all of the Quotes, Bids, or Proposals were minimally exceeding \$100,000, this Procurement is deemed to have complied with Section (2) of this Rule upon the following conditions:

- (a) The DPO must document in the Procurement File the basis for the original estimate under \$100,000 and the process used; and
 - (b) The Agency must still comply with the remainder of this Rule.
- (4) Inclusion of MWESBs. The Solicitations of Agencies must be inclusive, in accordance with Department policy and ORS 200.035.
- (5) Notices and ORPIN.
- (a) The Agency must post on ORPIN a notice of its verbal or Written Solicitation of at least three Quotes, Bids, or Proposals. In addition, the Agency may informally solicit Quotes, Bids, or Proposals by any other appropriate means (collectively, Notice).
 - (b) The Notice must provide:
 - (A) A general description of the Supplies and Services to be acquired; and

(B) A reasonable and sufficient interval between the first date of the Notice and the Closing. A reasonable and sufficient interval provides enough time during the work week for new Providers to obtain information and assistance to compete with any incumbent, established, or highly-resourced competitor in that Procurement (Objectives). Agencies may adjust the interval to account for the type of Procurement and needs of the Agencies, so long as the Objectives are not undermined. See Department policy;

(C) For Intermediate Procurements exceeding \$100,000, the Time Period must be a reasonable interval of at least seven (7) calendar Days;

(D) The name, title and address of the individual authorized by the Agency to receive Offers; and

(E) Any other information the Agency deems to be appropriate.

(c) OAR 125-247-0305 (Public Notice of Solicitation Documents) does not apply to Intermediate Procurements.

(6) Negotiations. An Authorized Agency may negotiate with a Proposer to clarify its Quote, Bid, or Proposal or to effect modifications that will make the Quote, Bid, or Proposal acceptable or make the Quote, Bid, or Proposal more Advantageous to the Authorized Agency.

(7) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement, according to ORS 279B.070(2).

(8) ORPIN. Agencies must post all Awards over \$5,000 on ORPIN.

(9) Amendments. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-246-0560.

(10) Legal Sufficiency Review. The Authorized Agency must comply with legal sufficiency review requirements of the Attorney General under ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0275

Sole-Source Procurements

(1) Generally. An Authorized Agency with delegated authority according to OAR 125-246-0170 may award a Contract without a competitive process through a Sole-Source Procurement according to the requirements of ORS 279B.075, this Rule, and the policy of the Department. The Authorized Agency must make a determination of a sole source based upon Written findings of fact that the Supplies and Services are available from only one source.

(2) Findings of Fact. Findings of fact required under OAR 125-247-0275(1) may include:

(a) Compatibility. The efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services from

only one source. For example, compatibility may be implicated when: Supplies are required to directly interface with or attach to equipment of the same manufacturer and no other manufacturer's Supplies will correctly interface with existing equipment; or when Services such as maintenance, warranty, project management, or systems integration are required to interface or integrate with existing Supplies and Services.

(b) Exchange of software or data. Specific Supplies and Services, which are available from only one source, may be required for the exchange of software or data with other public or private agencies. This finding may be particularly applicable when the Supplies and Services involve assets such as copyrights, patents, trademarks, and trade secrets.

(c) Pilot or experimental project. Supplies and Services are for the use in such projects, which may include but are not limited to research and economic development projects.

(d) Other findings that support the conclusion that Supplies and Services are available from only one source may include but are not limited to considerations of: unique design, availability, geographic location, exclusive authorized representative, cost of conversion, and warranty services.

(3) Market Research. ORS 279B.075 requires that the Authorized Agency "determines in writing" that the goods or services are "available from only one source." This means that the Authorized Agency must conduct and document its market research prior to public notice described in Section (4) or (5).

(4) Contracts up to \$150,000. For all Contracts awarded through Sole-Source Procurements over \$5,000 and not exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(b) The public notice must describe the Supplies and Services to be acquired through a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(c) The Authorized Agency must give Affected Persons at least seven calendar (7) Days from the date of the public notice of the determination that the Supplies or Services are available from only one source to protest the determination under OAR 125-247-0710. If the State Procurement Office is conducting the Sole-Source Procurement, then the State Procurement Office is the Authorized Agency for purposes of this Rule.

(d) The Authorized Agency must obtain the prior Written approval of that Agency's Designated Procurement Officer or delegatee before the Authorized Agency may award a Contract as a Sole-Source Procurement under this Rule.

(5) Contracts over \$150,000. For all Contracts exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN in accordance with Subsections (4)(a)-(c); and if the State Procurement Office is conducting the Sole-Source Procurement, then the State Procurement Office is the Authorized Agency for purposes of this Rule; and

(b) The Authorized Agency must obtain the prior Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency may award a Contract as a Sole-Source Procurement under this Section (5).

(6) Negotiation. According to ORS 279B.075 and to the extent reasonably practical, the Authorized Agency must negotiate with the sole source to obtain contract terms advantageous to the Authorized Agency.

(7) Protest. An Affected Person may protest the Authorized Agency's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(8) Brand Name Requirements. If the findings of fact required under this Rule include a specification of a Brand Name, that specification must be in accordance with ORS 279B.215 and OAR 125-247-0691.

(9) Legal Sufficiency Review. When legal sufficiency review by the Attorney General is required under ORS 291.047, the Authorized Agency must seek this approval.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.075

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0280

Emergency Procurements

(1) An Authorized Agency may award a Contract as an Emergency Procurement under ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract according to OAR 125-246-0170.

(2) An Authorized Agency may, in its discretion, enter into a Contract without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must encourage competition

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that is reasonable and appropriate under the Emergency circumstances. However, for the emergency procurement of construction services that are not Public Improvements, see ORS 279B.080(2).

(4) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must, either before or promptly after entering into an Emergency Contract, make and retain in its Procurement File documentation of the nature of the Emergency that includes:

(a) A brief description of the Supplies and Services to be provided under the Contract, together with its cost or anticipated cost;

(b) A brief explanation of how the Contract, in terms of duration or Supplies and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances;

(c) A description of the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(d) Documentation of the measures taken under Section (3) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(5) The head of the Authorized Agency, or a person designated under ORS 279A.075, must authorize the conduct of the emergency procurement, and must review and approve the documentation required by Section (4) of this Rule.

(6) Any Contract awarded under this Rule must be awarded no later than sixty (60) days following the approval of the documentation of the emergency unless the head of the Authorized Agency or Person designated has granted an extension.

(7) Agencies must also comply with OAR 137-045-0070, Emergency Public Contract Exemption, if applicable. The Authorized Agency must maintain a copy of any required report in the Authorized Agency's Emergency Procurement File.

(8) For an Emergency Procurement of construction services that are not Public Improvements, the Authorized Agency must insure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the Procurement, the Authorized Agency must set a solicitation time period that the Authorized Agency determines to be reasonable under the emergency circumstances and may issue Written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0286

Special Procurements; Definitions

As used in this Section and ORS 279B.400:

(1) "Class Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time or for multiple projects.

(2) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single project.

(3) "Special Procurement" means, unless the context requires otherwise, a class Special Procurement, a contract-specific Special Procurement or both.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Agency may request approval from the Chief Procurement Officer to use a new Special Procurement or the State Procurement Office may request approval from the Chief Procurement Officer to amend an existing Contract through a Special Procurement. The request must describe one or more particular Contracts or class of Contracts and use the designated ORPIN form. A request for a Special Procurement concerns the procurement process only, and the authority to use the Special Procurement is determined under OAR 125-246-0170.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Agency has elected to use Special Procurement and how it will benefit the Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Either:

(i) Is reasonably expected to result in substantial cost savings to the Agency or to the public; or

(ii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Agency must be clear and complete, including a description of the Supplies and Services that are the subject of the Special Procurement, provisions for advertisement, a procurement process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The State Procurement Office may require any additional information deemed necessary to evaluate the Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under Section (4) of this Rule.

(4) Public Notice. The Public Notice process and requirements are as follows:

(a) General. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(4) and in accordance with this Rule, unless otherwise directed by the Chief Procurement Officer (Public Notice). As a Written condition to approval of the Special Procurement, the Chief Procurement Officer may require that the State Procurement Office instead of the requesting Agency give the Public Notice.

(b) Content. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) Time Periods.

(A) If the Special Procurement involves one or more Solicitations, then Public Notice of the approval of the proposed Special Procurement must be given at least seven (7) calendar Days before the Award. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then Public Notice of the approval of the Special Procurement must be given at least seven (7) Days prior to the commencement of the Special Procurement.

(b) An Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only according to an exception under the Public Records Law (ORS 192.410 through 192.505).

(5) Protest. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) Conditions. If the Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the process described in the Special Procurement or the Rules for that method of Solicitation according to ORS 279B.055 through 279B.075 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(10) All Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

(11) If an Authorized Agency intends to award a Contract through a Special Procurement that calls for competition among prospective contractors, the Authorized Agency must award the Contract to the Offeror the Authorized Agency determines to be the most advantageous to the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0288

Special Procurements; by Rule

(1) Client Placement and Client Health Care Services.

(a) Authorization and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special

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Procurement by Rule to enter into Written agreements for Client Placement and Client Health Care services, as described in this Rule. When an Authorized Agency determines that a need exists to secure or maintain Client Placement Services or to secure Client Health Care Services, the Authorized Agency may contract subject to the following definitions and conditions of this Section (1).

(A) "Client Placement Services" means securing, enhancing, or continuing the placement of a Client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "Client Health Care Services" means health care services or provision of incidental or specialized supplies related to the health of a Client. Client Health Care Services include but are not limited to: preventive, diagnostic, therapeutic, behavioral, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status of a Client, or that affect the structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(C) Services that may prevent a placement or placement disruption but that cannot definitively be classified as Client Placement Services by the Authorized Agency are deemed to be Client Placement Services and are subject to the Special Procurement approved under this Rule. This Special Procurement for Client Placement Services may include training only if it is provided directly to the Client, excluding Providers.

(b) Authorized Agencies must execute a Contract or amendment to an existing Contract within sixty (60) days of obtaining the Client Placement Services or Client Health Care Services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(A) A Written statement of justification that describes the unforeseen or unavoidable circumstances that were reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial sixty (60) day period; and

(B) A copy of the Written justification is maintained in the Procurement File.

(c) The Authorized Agency may not make any payments for Client Placement Services or Client Health Care Services before obtaining all requisite approvals of the Contract.

(d) An Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency elects to use one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency elects to create its own source selection method, it must document the file describing why the alternate method was selected.

(e) The Authorized Agency must ensure that all Procurement personnel responsible for procuring Placement Services or Client Health Care Services are provided training on the conditions and limitations of this Rule.

(f) Contract and Amendment Forms.

(A) Original Forms. Authorized Agencies must use a Contract form and Amendment form (Form) approved by the State Procurement Office when acquiring Client Placement Services or Client Health Care Services according to this Rule. The State Procurement Office may approve the Form by facsimile, email, letter or any other method that provides an objective means to verify its approval. The Authorized Agency must review the approved Form at least every two years.

(B) Revised Forms.

(i) Designated Procurement Officer Approval up to \$100,000. For revised Forms up to a cumulative value of \$100,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to a Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(ii) Department of Justice Approval over \$100,000. For revised Forms exceeding a cumulative value of \$100,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval. Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(g) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(2) Client Services Source Selection.

(a) An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement Rule.

(b) The Chief Procurement Officer waives the source selection requirements as found in OAR 125-247-0200(1) through (6) for Authorized Agencies to procure Client Services, as defined in OAR 125-246-0110.

(c) The Authorized Agency is urged to solicit for Client Services when there is known competition. Under these circumstances, the Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency uses one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency creates its own source selection method, it must document the file describing why the alternate method was selected. This subsection (2)(c) does not apply to Section (1) above.

(3) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to renegotiate and amend existing Contracts with incumbent Contractors, and then only if it is in the best interest of the State.

(b) Process and Criteria. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must meet the following conditions in its Renegotiations with incumbent Contractors:

(A) Favorable Result. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation;

(C) Optional Term or Condition. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was rejected at that time, (for the purpose of this subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) Market. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency may research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the Authorized Agency researches the Market Norm, then the Authorized Agency must document its results in the Procurement File. Based upon this information, the Authorized Agency may confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(4) Advertising Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to purchase media advertising, regardless of dollar value, without competitive bidding, according to OAR 125-246-0170.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) Equipment Repair and Overhaul.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for equipment repair and overhaul, as described in this Rule.

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(b) Conditions. An Authorized Agency, having delegated purchasing authority according to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and according to the methods in (4)(c) of this Rule.

(c) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) Contracts for Price Regulated Items.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) Investment Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted according to duly enacted statute, or constitution.

(b) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) Food Contracts.

(a) Intent. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at "lower than normal" prices (also referred to as "spot buys") (Food Contracts).

(b) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of Food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) Conditions. An Authorized Agency may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) A non-exclusive Mandatory Use Contract or regularly scheduled bid process already exists for the item being purchased;

(B) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing Mandatory Use Contract or recent bid (as described in Subsection (8)(d) of this Rule) and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement; and

(C) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes).

(D) Any Mandatory Use Contract currently in place for the item being purchased contain clauses allowing for the use of this Special Procurement; and

(E) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) Documentation. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0355: the Authorized Agency's attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months prior to the current purchase. When practical, Written Quotes are recommended.

(e) Process and Criteria. Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN, except when the competitive method involves verbal Quotes for perishable food. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) Purchase of Used Personal Property.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining Quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the Authorized Agency purchase. "Used personal property or equipment" generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment not exceeding \$150,000, Authorized Agencies having delegated authority according to OAR 125-246-0170, must, where feasible, obtain three Quotes, unless the Authorized Agency has determined and documented that a purchase without obtaining Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, the State Procurement Office must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed \$150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the State Procurement Office prior to making the purchase.

(D) Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) Reverse Auctions.

(a) Authority. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule.

(b) Process. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

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(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) “winning” or “not winning” or (ii) “1st, 2nd, or higher”);

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet “click” agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency’s or the State’s best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders according to ORS 279B.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(c) Policy. The Authorized Agency must follow the policy of the Department.

(d) Public Notice.

(A) The Authorized Agency must disclose the Reverse Auction process in the Solicitation Document. The Reverse Auction process must include the manner of giving notices of the price(s) offered, rank(s), score(s), and related details to the initial Bidders.

(B) The Authorized Agency must provide initial notice of this Solicitation through ORPIN.

(C) If the value exceeds \$150,000, the Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar Days prior to making the Award.

(e) Prequalification. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related Rules.

(f) E-Procurement. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (11) take precedence over the more general requirements of OAR 125-247-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0295

Special Procurements: General or Special Counsel Authorized by the Attorney General

(1) Authority and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule. Under ORS 180.235, the Oregon Attorney General may authorize a public officer or Agency to retain its own general or special counsel, including but not limited to conflict counsel, other than the Department of Justice. This Rule governs the process for obtaining such counsel.

(2) Definitions

For purposes of this Rule only, these terms have the following meanings:

(a) “Attorney General” means the Attorney General of the State of Oregon.

(b) “Authorized Agency” means a public officer or Agency that the Attorney General authorized to retain its own general or special counsel other than the Department of Justice under ORS 180.235.

(c) “Authorized Legal Services” means the legal services as authorized by the Attorney General for the particular matter or class of matters and as required by the Authorized Agency.

(d) “Outside Counsel” means general or special counsel selected by the Authorized Agency under this Rule.

(e) “Firm” means the proprietorship, partnership or professional legal corporation engaged in the practice of law of which Outside Counsel is a partner, a shareholder, an associate, a member, or a lawyer serving as “of counsel.”

(f) “Solicitation” means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

(3) Selection Criteria

(a) The Authorized Agency must select the Firm it considers most advantageous based on the following factors:

(A) The knowledge, skills and ability of the Firm that will provide Authorized Legal Services. The Firm’s ability to provide Authorized Legal Services includes the training and expertise of the Firm attorneys, including Outside Counsel. Outside Counsel must be a member of the Oregon State Bar according to ORS 180.235(2);

(B) The Firm’s experience, level of expertise and suitability to perform the Authorized Legal Services;

(C) Whether the Firm’s available personnel possess any required licenses or certifications required to perform the legal services for the Authorized Legal Services, such as licenses to practice law in the appropriate jurisdiction, or to appear in a certain forum;

(D) The Outside Counsel’s availability and capability to perform the Authorized Legal Services and meet the Agency’s needs;

(E) The commitment the Outside Counsel and Counsel’s Firm can make to the Authorized Agency to meet the Agency’s needs;

(F) The value of the Firm’s legal services, taking into account the cost of the Firm’s legal services; and

(G) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(b) In weighing the evaluation factors, no single factor is determinative.

(4) Scope of Firms Considered The Solicitation process may range from direct negotiation and contracting with a single firm to publication of a request for proposals. The Authorized Agency must extend Solicitations to those firms that it considers reasonable and practical to solicit under the circumstances, and must take into consideration the following factors:

(a) When the subject matter of the Authorized Legal Services requires specialized knowledge in a particular field of law, the Authorized Agency may limit the Solicitation to prospective Firms that have a reputation of subject matter expertise in that field of law;

(b) The Authorized Agency must limit the number of Firms considered under the Solicitation as appropriate if the interests of the Authorized Agency would likely be adversely affected by delay in obtaining a Firm or through broad distribution of the Solicitation; and

(c) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(5) Documentation of Selection

(a) The Authorized Agency must prepare a record of selection signed by the public officer or Agency designated to be responsible for the selection process. The record of selection must include the public officer’s or Agency’s summary of:

(A) The Solicitation process used and the Firms considered in the Solicitation process;

(B) Why the selected firm is considered most advantageous to the Authorized Agency; and

(C) Why the Scope of the Solicitation was reasonable and practical under the circumstances.

(b) As used in (5)(a) above, the public officer may include a member of the Authorized Agency’s board or commission.

(c) The record of solicitation must be retained by the Authorized Agency within the Procurement File for the Firm.

(6) The Agency may procure Amendments to existing Contracts under this Rule. In lieu of complying with Sections (4) through (5) of this Rule, the Agency must document why amending the Contract is necessary and in the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.075, 279B.085

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0296

Mandatory Use Contracts and Price Agreements

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process according to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the State Procurement Office.

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(4) Despite Section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency provided that a formal, Written agreement is entered into between the parties;

(b) Personal property for resale through student stores operated by public educational Agencies; and

(c) Emergency purchases declared by an Authorized Agency according to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the State Procurement Office.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0300

Applicability of General Rules to Methods of Source Selection

(1) Generally. These Procurement Process Rules are intended to apply to more than one sourcing method according to ORS 279B.050 through 279B.090 and to specify those methods.

(2) In the event of conflict or ambiguity arising from specific requirements of another Rule in Division 247 and a general Rule in OAR 125-247-0305 through 125-247-0691, the specific requirements of another Rule take precedence over the more general requirements of a Rule under Procurement Process.

(3) If a general Rule in OAR 125-247-0305 through 125-247-0691 is silent regarding its specific application or an ambiguity arises regarding the application of any such Rule to any of the seven sourcing methods of ORS 279B.050 through 279B.090, that Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0261.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0305

Public Notice of Solicitation Documents

(1) Application. This Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0261.

(2) Notice of Solicitation Documents.

(a) Official Notice. An Authorized Agency must post public notice of every Solicitation Document on ORPIN in accordance with OAR 125-246-0500 (Official Notice).

(b) Additional Notice. The Authorized Agency may give additional notice if:

(A) The additional notice refers to the Official Notice, and

(B) The Authorized Agency uses any method it determines appropriate to foster and promote competition, including:

(i) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(ii) Placing notice on the Authorized Agency's Internet World Wide Web site; or

(iii) Publishing notice in a newspaper of general circulation as described in ORS 279B.055(4) (Additional Notice).

(3) Content of Official and Additional Notices. All notices for solicitation of Offers must set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Supplies and Services to be acquired;

(c) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Supplies and Services is one for which Persons must be prequalified;

(d) The office where contract terms, conditions and Specifications may be reviewed if not electronically attached;

(e) The name, title and address of the individual authorized by the Authorized Agency to receive Offers;

(f) The scheduled Opening; and

(g) Any other information the Authorized Agency deems to be appropriate.

(4) Notice Time Periods.

(a) The Authorized Agency must give Official Notice of an Invitation to Bid at least fourteen (14) Days before the Closing.

(b) The Authorized Agency must give Official Notice of a Request for Proposals at least thirty (30) Days before the Closing.

(c) The Authorized Agency may give Additional Notice for any reasonable time

(e) The notice time period for a Qualified Products List is found in OAR 125-247- period before the Closing, as determined by the Authorized Agency.

(d) Despite Section (3)(a) and (b), the Authorized Agency may determine that a shorter time period is in the public's interest and that a shorter time period will not substantially affect competition. In no event may the Authorized Agency give any Official Notice less than seven (7) Days before Closing. The Authorized Agency must document the specific reasons for the shorter time period in the Procurement File in accordance with OAR 125-246-0355.0525.

(5) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(6) Minority, Women, and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

(7) Fees. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document, supporting documents and any combination thereof.

(8) Notice of Addenda. The Authorized Agency must provide notice to potential Offerors on ORPIN of any Addenda to a Solicitation Document in accordance with OAR 125-247-0430.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0310

Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive proposals, the Offer is always a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-247-0480. The Authorized Agency may elect to accept the Offer at any time during the specified period, and the Authorized Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Despite the fact that a competitive proposal is a "Firm Offer" for the period specified in OAR 125-247-0480, the Authorized Agency may elect to discuss or negotiate certain contractual provisions, as identified in these Rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by these Rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that these Rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions according to OAR 125-247-0261, a Proposer must not make its Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under OAR 125-247-0261, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0330

E-Procurement

(1) General

(a) Electronic Processes. An Authorized Agency may conduct all phases of a Procurement, including without limitation, the posting of Electronic Advertisements and the receipt of Electronic Offers, by the following electronic processes:

(A) E-Bidding;

(B) Reverse Auction; or

(C) Special Procurement if (i) or (ii) are not appropriate (Electronic Processes). The Authorized Agency must specify in a Solicitation Document, a request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.

(b) Security Measures. The Authorized Agency must open an Electronic Offer in accordance with electronic security measures in effect at the Authorized Agency at the time of its receipt of the Electronic Offer. Unless the Authorized Agency provides procedures for the secure receipt of

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Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Authorized Agency's use of electronic Signatures must be consistent with applicable statutes and rules. An Authorized Agency must authorize, and may limit the use of Electronic Processes of conducting a Procurement based on the best interests of the Authorized Agency, as determined by the Authorized Agency.

(d) If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize Electronic Offers unless the Authorized Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Authorized Agency must conduct all portions of an electronic Procurement in accordance with these Division 247 Rules, unless otherwise set forth in this Rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement, the Authorized Agency may require potential Contractors to register with the Authorized Agency before the date and time on which the Authorized Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Authorized Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. An Authorized Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Authorized Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Authorized Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Authorized Agency will first receive Electronic Offers, the Authorized Agency must begin to accept real time Electronic Offers on ORPIN or other Electronic Procurement System approved by the State Procurement Office (for purposes of this Rule, collectively, ORPIN), and must continue to accept Electronic Offers in accordance with Subsection 5(b) of this Rule until the date and time specified by the Authorized Agency, after which the Authorized Agency will no longer accept Electronic Offers.

(5) One-Time Receipt of All Electronic Offers. When an Authorized Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Authorized Agency must receive the Electronic Offers in accordance with these Division 247 Rules.

(6) Failure of the E-Procurement System. In the event of a failure of ORPIN that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Authorized Agency may cancel the Procurement in accordance with OAR 125-247-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the ORPIN becomes available.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0340

Reverse Auctions

(1) If the Authorized Agency desires to conduct a Reverse Auction as defined in OAR 125-247-0288(9), the Authorized Agency must follow the policy of the Department. The requirements of OAR 125-247-0288(9) apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of OAR 125-247-0288(9) take precedence over the more general requirements of this Rule.

(2) Multiple Receipts of Offers during a Period of Time. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Authorized Agency must accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(a) Following receipt of the first Electronic Offer after the day and time the Authorized Agency first receives Electronic Offers, the Authorized Agency must give notice to the initial Bidders and update on a real time basis:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. At any time before the date and time after which the Authorized Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(b) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Authorized Agency first accepts Electronic Offers.

(c) A Person may withdraw an Electronic Offer only in compliance with these Division 247 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0400

Offer Preparation

(1) Instructions. Offerors must submit and Sign their Offers in accordance with the instructions set forth in the Solicitation Document. Offerors must initial and submit any corrections or erasures to their Offers prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. Offerors must submit their Offer on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(3) Documents. Offerors must provide the Authorized Agency with all documents and Descriptive Literature required by the Solicitation Document.

(4) Electronic Submissions. If the Solicitation Document permitted Electronic Offers under OAR 125-247-0330, Offerors may submit their Offers electronically when authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0410

Offer Submission

(1) Product Samples and Descriptive Literature. An Authorized Agency may require Product Samples or Descriptive Literature if the Authorized Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Authorized Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers.

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the Authorized Agency, whichever is applicable. If the Authorized Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these Division 247 Rules and the instructions set forth in the Solicitation Document. The Authorized Agency must not consider facsimile or other electronic Offers unless authorized by the Solicitation Document.

(b) The Authorized Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. Offerors are responsible for ensuring the Authorized Agency receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0430

Addenda to Solicitation Document

(1) Issuance; Receipt. The Authorized Agency may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Authorized Agency otherwise specifies in the Addenda.

(2) Notice and Distribution. The Authorized Agency must notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document must specify how the Authorized Agency will provide notice of Addenda and how the Authorized Agency will make the Addenda available before Closing, and at each subsequent step or Phase of evaluation if the Authorized Agency will engage in a Multistep Competitive Sealed Bidding process in accordance with OAR 125-247-0256, or a Multi-tiered or

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Multistep Competitive Sealed Proposals process in accordance with OAR 125-247-0261.

(3) Timelines; Extensions.

(a) The Authorized Agency must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Authorized Agency may extend the Closing if the Authorized Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Authorized Agency must not issue Addenda less than 3 Business Days before the Closing unless the Addendum also extends the Closing.

(b) Despite Subsection (3)(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any step or Phase of competition under a Multistep Sealed Bidding or Multistep Sealed Proposals, issued in accordance with OAR 125-247-0256 or 125-247-0261, must be issued no fewer than five (5) Days before the beginning of that step or Phase of competition, unless the Authorized Agency determines that a shorter period is sufficient to allow the Offerors to prepare for that step or Phase of competition. The Authorized Agency must document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next step or Phase of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 125-247-0730, by the close of the Authorized Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 125-247-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with OAR 125-247-0730, then the Authorized Agency may only consider an Offeror's request for change or protest to the Addendum, and the Authorized Agency must not consider a request for change or protest to matters not added or modified by the Addendum. Despite any provision of this Subsection (4) of this Rule, an Authorized Agency is not required to provide a protest period for Addenda issued after initial Closing during a or multistep Procurement Process conducted according to ORS 279B.055 or 279B.060 and their respective rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0525

Qualified Products Lists

An Authorized Agency may develop and maintain a qualified products list according to ORS 279B.115.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0550

Prequalification of Prospective Offerors; Request for Qualifications (RFQ)

(1) Prequalification of Prospective Offerors. An Authorized Agency may prequalify prospective Offerors according to ORS 279B.120 and 279B.125. Despite the prohibition against revocation of prequalification in ORS 279B.120(3), an Authorized Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(2) Request for Qualifications (RFQ). For purposes of this Section, an RFQ may be used without the RFQ constituting a Prequalification according to Section (1) of this Rule, if the Authorized Agency establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, prior to issuing a Request for Proposals (RFP). If an Authorized Agency establishes a closed, exclusive, or binding list of qualified Contractors, then the Authorized Agency must comply with Section (1) of this Rule. The Authorized Agency is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ must describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the Authorized Agency to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed services. The RFQ must include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to an Authorized Agency's subsequent RFP.

(d) All RFQs must:

(A) Be in Writing;

(B) Be posted on ORPIN;

(C) Provide that the Authorized Agency may, at any time during the Solicitation process, reject any or all Proposals or cancel the Solicitation without liability if it is in the public interest to do so; and

(D) Provide that the Authorized Agency is not responsible for any costs of any proposers incurred while submitting Proposals, and that all Proposers who respond to Solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(e) According to ORS 200.035, the Authorized Agency must notify, in Writing, the Advocate for Minority, Women and Emerging Small Businesses of each Solicitation and contracting opportunity exceeding \$5,000.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.130

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0575

Debarment of Prospective Offerors

(1) Generally. An Authorized Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Despite the limitation on the term for Debarment in ORS 279B.130(1)(b), an Authorized Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. An Authorized Agency may attribute improper conduct of a Person or their affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. An Authorized Agency may allow a Debarred Person to participate in Solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to an Authorized Agency. The determination must specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.130

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0600

Offer Evaluation and Award

(1) Authorized Agency Evaluation. The Authorized Agency must evaluate Offers only as set forth in the Solicitation Document, according to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Authorized Agency must not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 125-246-0310 for nonresident Bidders.

(B) Public Printing. The Authorized Agency must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Authorized Agency determines that one or more Bids are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Authorized Agency determines that one or more Proposals are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(B) Public Printing. The Authorized Agency must for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(C) Recycled Materials. When procuring Goods, the Authorized Agency must give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 125-246-0322.

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(2) Clarification of Bids. After the Bid Opening, an Authorized Agency may conduct Discussions with apparent Responsive Bidders for the purpose of clarification and to assure full understanding of the Bid. All Bids, at the Authorized Agency's sole discretion, needing clarification must be afforded such an opportunity. The Authorized Agency must document clarification of any Bidder's Bid in the Procurement File in accordance with OAR 125-246-0355.

(3) Negotiations Prohibited or Allowed.

(a) Prohibition in Competitive Sealed Bidding. Except as permitted by this Section 3(b) of this Rule, an Authorized Agency must not negotiate with any Bidder in a competitive sealed bidding according to ORS 279B.060 and related Rule. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560. An Authorized Agency may conduct Discussions in accordance with OAR 125-247-0256.

(b) Allowance in Other Procurement Methods. An Authorized Agency may conduct Discussions or Negotiations with one or more Offerors in Competitive Sealed Proposals, Small Procurements, Intermediate Procurements, Emergency Procurements if applicable, and Special Procurements if applicable, in accordance with ORS 279B.060(6)(b), OAR 125-247-0260, 125-247-0261, 125-247-0270, 125-247-0287, and 125-247-0288. To the extent practical, an Authorized Agency must negotiate in Sole-Source Procurements in accordance with OAR 125-247-0275. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560.

(c) Other Procurements. This section (3) does not apply to Small Procurements, Emergency Procurements, or Special Procurements which do not use Solicitations.

(4) Award.

(a) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the Authorized Agency's expected purchases, or grand total of all items.

(c) Multiple Awards; Bids.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be awarded for any Invitation to Bid must not preclude the Authorized Agency from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Authorized Agency must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services.

(d) Multiple Awards; Proposals.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for Proposals must not preclude the Authorized Agency from awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Authorized Agency must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services.

(e) Partial Awards. If after evaluation of Offers, the Authorized Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Authorized Agency may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Authorized Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or None Offers. An Authorized Agency may award all or no Offers if the evaluation shows an all or no Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

(g) Life Cycle Costing. The Authorized Agency must follow OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0610

Notice of Intent to Award

(1) Notice of Intent to Award. The Authorized Agency must provide Written notice of its intent to award a Contract resulting from a formal Invitation to Bid or Request for Proposal to all Offerors according to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Authorized Agency determines that circumstances justify prompt execution of the Contract, in which case the Authorized Agency may provide a shorter notice period. The Authorized Agency must document the specific reasons for the shorter notice period in the Procurement File in accordance with OAR 125-246-0355.

(2) Finality. The Authorized Agency's Award must not be final until the later of the following:

(a) The expiration of the protest period provided according to OAR 125-247-0740; or

(b) The Authorized Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) The Authorized Agency may provide this notice through any reasonable means and, if functionality exists, through ORPIN in accordance with OAR 125-246-0500.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.135

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0691

Brand Name or equal Specification

(1) Applicability and Use. This Rule applies to Specifications for a Solicitation or class of Solicitations. For a Solicitation or class of Solicitations under ORS 279B.060, 279B.065, 279B.070, 279B.085, or 279A.200 through 279A.225, as provided in 279B.215:

(a) A brand name or equal Specification may be used when the use of a brand name or equal Specification is advantageous to the Agency, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the Agency.

(b) The Agency is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(c) Nothing in this subsection may be construed as prohibiting an Agency from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the Agency.

(2) Determination. A brand name Specification may be prepared and used only if the Agency determines for a Solicitation or a class of Solicitations that only the identified brand name Specification will meet the needs of the Agency based on one or more of the following written determinations:

(a) That use of a brand name Specification is unlikely to encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

(b) That use of a brand name Specification would result in substantial cost savings to the Agency;

(c) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

(d) That efficient utilization of existing Goods requires the acquisition of compatible Goods or Services.

(3) An Agency's use of a brand name Specification may be subject to review only as provided in ORS 279B.405.

(4) Single Manufacturer, Multiple Sellers. An Authorized Agency may prepare and use a brand name or equal Specification for Supplies and Services available from only one manufacturer, but available through multiple sellers, if the Authorized Agency complies with Sections (1) and (2) of this Rule and the following requirements:

(a) If the total purchase is \$5,000 or more but does not exceed \$150,000 and Supplies and Services are not available under an existing Mandatory Use Contract, the Authorized Agency must obtain informal, competitive Quotes, Bids, or Proposals and document this process in the Procurement File according to ORS 279B.070 and OAR 125-247-0270;

(b) If the purchase exceeds \$150,000, and the Supplies and Services are not available under an existing Price Agreement for information technology with competing products or a Mandatory Use Contract, an Authorized Agency must first request and obtain prior written authorization from the Chief Procurement Officer to proceed with the acquisition.

(5) Single Manufacturer, Multiple Purchases. If an Authorized Agency intends to make several purchases of brand name-specified

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Supplies and Services from a particular manufacturer or seller for a period not to exceed five (5) years, the Authorized Agency must so state this information in: the Procurement File; the Solicitation Document, if any; or a Public Notice of a solicitation on ORPIN. If the Authorized Agency estimates the total purchase amount to exceed \$150,000, this estimate must also be stated in the Public Notice.

(6) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(7) All Authorized Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.215

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0700

Protests and Judicial Review of Approvals of Special Procurements

(1) Purpose. An Affected Person may protest the approval of a Special Procurement. According to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Chief Procurement Officer and exhaust all administrative remedies.

(2) Delivery. Regardless of the requirements for filing a writ of review under ORS Chapter 34 according to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Chief Procurement Officer within seven Days after the first date of public notice of the approval of a Special Procurement by the Chief Procurement Officer, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Chief Procurement Officer Response. The Chief Procurement Officer must not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Chief Procurement Officer must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer upholds the protest, in whole or in part, the Chief Procurement Officer may with sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Chief Procurement Officer's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.400

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0710

Protests and Judicial Review of Sole-Source Procurements

(1) Purpose. For Sole-Source Procurements requiring public notice under OAR 125-247-0275, an Affected Person may protest the determination of the Chief Procurement Officer, or Designated Procurement Officer of the Authorized Agency for Contracts not exceeding \$150,000 (Designated Procurement Officer), that the Supplies and Services or class of Supplies and Services are available from only one source. According to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Chief Procurement Officer or Designated Procurement Officer and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the Sole-Source Procurement, an Affected Person must deliver Written protest to the Chief Procurement Officer or Designated Procurement Officer within seven (7) Days after the first date of public notice of the Sole-Source Procurement, unless a different protest period is provided in the public notice of a Sole-Source Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Response. The Chief Procurement Officer or Designated Procurement Officer must not consider an Affected Person's Sole-Source Procurement protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the public notice of the Sole-Source Procurement. The Chief Procurement Officer or Designated Procurement Officer must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer or Designated Procurement Officer upholds the

protest, in whole or in part, the Authorized Agency must not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Chief Procurement Officer's or Designated Procurement Officer's disposition of a Sole-Source Procurement protest must be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0730

Protests and Judicial Review of Solicitations

(1) Purpose. A prospective Offeror may protest the Procurement Process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). According to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Authorized Agency not less than seven (7) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest must include a statement of the desired changes to the Procurement Process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) Authorized Agency Response. The Authorized Agency may not consider a Prospective Offeror's Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Authorized Agency must issue a Written disposition of the protest no less than three (3) business days before Bids, Proposals or Offers are due, unless a Written determination is made by the Authorized Agency that circumstances exist that require a shorter time limit, in accordance with the timeline set forth in ORS 279B.405(6). If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 125-247-0430 or cancel the Procurement or Solicitation under OAR 125-247-0660.

(5) Extension of Closing. If the Authorized Agency receives a protest from a prospective Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the Authorized Agency's decision relating to a Solicitation protest must be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0731

Protests and Judicial Review of Qualified Products List Decisions

(1) Purpose. A prospective Offeror may protest the Authorized Agency's decision to exclude the prospective Offeror's Goods from the Authorized Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Authorized Agency's qualified products list decision.

(2) Delivery. Unless otherwise stated in the Authorized Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after issuance of the Authorized Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(4) The Authorized Agency Response. The Authorized Agency may not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Authorized Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Authorized Agency must issue a Written disposition of the protest in a timely manner. If the

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Authorized Agency upholds the protest, it must include the successful protestor's Goods on the qualified products list.

(5) Judicial Review. Judicial review of the Authorized Agency's decision relating to a qualified products list protest must be in accordance with ORS 279B.425(7) and (9).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.115

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-247-0750

Judicial Review of Other Violations

Any violation of ORS Chapter 279A or 279B by an Authorized Agency, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.420

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0100

Application

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 248 apply to:

(a) The screening and selection of Architects, Engineers, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering and Land Surveying Services or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and Providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 248 take precedence over the more general requirements of the Rules in Division 246.

(3) The Rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 248 of the Rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(4) Delegation of authority for these contracts must be according to ORS 125-246-0170.

(5) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, ORS 125-248-0200, the Informal Selection Procedure, ORS 125-248-0210, and the Formal Selection Procedure, ORS 125-248-0220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(6) Effective Date. These Division 248 Rules apply only to the above-described Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals

(1) When selecting the most qualified Consultants to perform Architectural, Engineering and Land Surveying Services, Authorized Agencies that are contracting with Consultants under the conditions listed in ORS 279C.110(2) must follow the applicable selection procedure under either ORS 125-248-0200 (Direct Appointment Procedure), 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure). Authorized Agencies subject to this Section (1) must not solicit or use pricing policies and pricing proposals, or other pricing information, to determine a Consultant's compensation until after the Authorized Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) Authorized Agencies selecting Consultants to perform Related Services must follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Authorized Agencies must follow the applicable selection procedure under ORS 125-248-0200 (Direct Appointment Procedure) if the requirements of ORS 125-248-0200(1) apply, 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure); and

(b) When selecting a Consultant on the basis of price competition alone, Authorized Agencies must follow either the provisions under ORS chapter 125, division 247 for obtaining and evaluating Bids, or ORS 125-248-0200 (Direct Appointment Procedure) if the requirements of ORS 125-248-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Authorized Agencies must follow either the provisions under ORS

chapter 125, division 247 for obtaining and evaluating Proposals, or ORS 125-248-0200 (Direct Appointment Procedure) if the requirements of ORS 125-248-0200(1) apply. Authorized Agencies subject to this Section (2) may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, submitted with a Proposal as part of the evaluation.

(3) Authorized Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If an Authorized Agency uses electronic methods to screen and select a Consultant, the Authorized Agency must conduct the screening and selection procedure by electronic means, substantially in conformance with ORS 125-247-0330 (Electronic Procurement).

(4) In applying these Rules, Authorized Agencies must support the State's goal of promoting a sustainable economy in the rural areas of the State.

(5) Consistent with the requirements of 2007 Oregon Laws, Chapter 764, Section 41 and ORS 279C.100 to 279C.125, the following requirements apply to proposals received by an Authorized Agency for Architectural, Engineering and Land Surveying Services or Related Services:

(a) The term "competitive proposal", for purposes of 2007 Oregon Laws, Chapter 764, Section 41 includes proposals under ORS 125-248-0200 (Direct Appointment Procedure), 125-248-0210 (Informal Selection Procedure), 125-248-0220 (Formal Selection Procedure) or 125-248-0130(2)(c) (selection based on price and qualifications),

(b) For purposes of proposals received by an Authorized Agency under ORS 125-248-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, ORS 125-248-0200 proposals are not required to be open for public inspection until after the Authorized Agency has made the decision to begin contract negotiations with the selected consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Authorized Agency is conducting discussions or negotiations with proposers who submit proposals that the Authorized Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Authorized Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of 2007 Oregon Laws, Chapter 764, Section 41. Otherwise, Authorized Agencies should open proposals in such a way as to avoid disclosure of the contents until after the Authorized Agency issues a notice of intent to award a contract.

(d) Disclosure of proposals and proposal information is otherwise governed by 2007 Oregon Laws, Chapter 764, Section 41.

(6) All Agencies must provide timely notice to the Advocate for Minority, Women and Emergency Small Business, according to ORS 200.035.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0200

Direct Appointment Procedure

(1) Authorized Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these Rules if:

(a) Emergency. The Authorized Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed \$25,000; or

(c) Continuation of Project with Intermediate Estimated Fee. Where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed \$150,000; and

(C) The Authorized Agency used either the formal selection procedure under ORS 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; or

(d) Continuation of Project with Extensive Estimated Fee. Where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

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(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Authorized Agency used either the formal selection procedure under OAR 125-248-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; and

(C) The Authorized Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional Scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to Authorized Agency;

(ii) Protect the integrity of the public contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) The Authorized Agencies may select Consultants for Contracts under this Rule from the following sources:

(a) The Authorized Agency's list of Consultants that is created under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(b) Another Authorized Agency's list of Consultants that the Authorized Agency has created under OAR 125-248-0120 (List of Interested Consultants; Performance Record), with Written consent of that Authorized Agency; or

(c) All Consultants offering the required Architectural, Engineering and Land Surveying Services or Related Services that Authorized Agencies reasonably can identify under the circumstances.

(3) The Authorized Agency must direct Negotiations with Consultants selected under this Rule toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C110 & 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0210

Informal Selection Procedure

(1) Authorized Agencies may use the informal selection procedure described in this Rule to obtain a Contract if the Estimated Fee is expected to not exceed \$150,000.

(2) Authorized Agencies using the informal selection procedure must:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which Consultant's Architectural, Engineering and Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering and Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection Criteria may include:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected Workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering and Land Surveying Services or Related Services, including but not limited to quali-

ty of Work, ability to meet schedules, cost control methods and Contract Administration practices;

(iv) A Consultant's approach to Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of Work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required; and

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these Rules; and

(H) For Related Services only, pricing policies, and pricing proposals, or other pricing information.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) The Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(B) Another Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants the Authorized Agency can reasonably locate that offer the desired Architectural, Engineering and Land Surveying Services or Related Services, separately or in any combination thereof.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If the Authorized Agency does not cancel the RFP after it reviews and ranks each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(4) The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (3) of this Rule, until Negotiations result in a Contract. If Negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular informal Solicitation and thereafter may proceed with a new informal Solicitation under this Rule or proceed with a formal Solicitation under OAR 125-248-0220 (Formal Selection Procedure).

(5) The Authorized Agency must terminate the informal selection procedure and proceed with the formal selection procedure under OAR 125-248-0220 if the Scope of the anticipated Contract is revised during Negotiations so that the Estimated Fee will exceed \$150,000. Regardless of the foregoing, the Authorized Agency may continue Contract Negotiations with the Proposer selected under the informal selection procedure if the Authorized Agency makes Written findings that contracting with that Proposer will:

(a) Promote efficient use of the public funds, and resources and result in substantial cost savings to the Authorized Agency; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(6) The Authorized Agency must comply with applicable preferences for recycled materials, according to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324.

(7) Minority, Women and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all

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Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0220

Formal Selection Procedure

(1) General. Subject to OAR 125-248-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Authorized Agencies must use the formal selection procedure described in this Rule to select Consultants if the Consultants cannot be selected under either OAR 125-248-0200 (Direct Appointment Procedure) or under 125-248-0210 (Informal Selection Procedure). The Formal Selection Procedure may otherwise be used at Authorized Agencies' discretion.

(2) Advertisement. Authorized Agencies using the formal selection procedure must obtain Contracts through public advertisement of Requests for Proposals or Requests for Qualifications followed by Requests for Proposals.

(a) The Authorized Agency must advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to: local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences. In addition, an Authorized Agency must use ORPIN according to OAR 125-246-0500, provided the Authorized Agency follows a procedure for electronic advertisement approved by the State Procurement Office or its delegatee.

(A) The Authorized Agency must publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar Days before the closing date set forth in the RFQ or RFP.

(B) The Authorized Agency must include a brief description of the following items in the advertisement:

- (i) The Project;
- (ii) A description of the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks;
- (iii) How and where Consultants may obtain a copy of the RFQ or RFP; and
- (iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) The Authorized Agency may also send notice of the RFP or RFQ directly to all Consultants on the Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Authorized Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Authorized Agency may issue an RFP for some or all of the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ.

(a) The Authorized Agency must include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Authorized Agency is seeking Consultants;

(B) A description of the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks;

(F) The RFQ evaluation criteria, including weights, points, or other classifications applicable to each criterion;

(G) A statement whether or not the Authorized Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and the Authorized Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) The Authorized Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ including Consultants' available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering and Land Surveying Services or Related Services and references concerning past performance, and a copy of all records, if any, of Consultants' performance under Contracts with any other Authorized Agency;

(D) The number of Consultants' experienced staff available to perform the Architectural, Engineering and Land Surveying Services, and Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;

(E) Consultants' approaches to Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(F) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(G) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Consultants' ability to assist an Authorized Agency in complying with art acquisition requirements, according to ORS 276.073 through 276.090;

(I) Consultants' ability to assist an Authorized Agency in complying with State of Oregon energy efficient design requirements, according to ORS 276.900 through 276.915;

(J) Consultants' ability to assist an Authorized Agency in complying with the solar energy technology requirements of 2007 Oregon Laws, Chapter 310;

(K) Any other information the Authorized Agency deems reasonable and necessary to evaluate Consultants' qualifications; and

(L) For Related Services only, Consultants' pricing policies and pricing proposals and other pricing information.

(c) RFQ Evaluation Committee. The Authorized Agency must establish an RFQ evaluation committee of at least two (2) individuals to review, score, and rank the responding Consultants according to the Solicitation criteria. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering and land surveying, Related Services, construction or Public Contracting. If an Authorized Agency procedure permits, the Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering and land surveying or related professions. The Authorized Agency must designate one member of the evaluation committee as the evaluation committee chairperson.

(d) The Authorized Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to the following:

(A) Requiring Consultants responding to an RFQ to achieve a Threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications; or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Authorized Agency must establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) The Authorized Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Authorized Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on the Authorized Agency's short list established under Section (3) of this Rule if the Consultant or any of Consultant's principals, partners or associates is a member of the Authorized Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, the Authorized Agency must provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants through Request for Proposals. Authorized Agencies must use the procedure described in Section (4) of this Rule when issuing an RFP for a Contract described in Section (1) of this Rule.

(a) RFP Required Contents. Authorized Agencies using the formal selection procedure must include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering and Land Surveying Services or Related Services sought for the Project, the estimated Project

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cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering and Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Authorized Agency does not indicate the applicable number of points, weights or other classifications then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering and Land Surveying Services or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have available to perform the Architectural, Engineering and Land Surveying Service or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in this Section;

(v) The proportion of time Proposers estimate that the staff referenced in this Section would spend on the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to successfully complete similar Architectural, Engineering and Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality Work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering and Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(xiii) Any other criteria that the Authorized Agency seems relevant to the Project and Architectural, Engineering and Land Surveying Services, and Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Authorized Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Authorized Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these Rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Authorized Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Authorized Agency deems reasonably necessary to permit the Authorized Agency to evaluate, rank and

select the most qualified Proposer to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(N) A sample form of the Contract; and

(O) For Related Services only, pricing policies, proposals and other pricing information.

(b) RFP Evaluation Committee. The Authorized Agency must establish a committee of at least three individuals to review score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Authorized Agency may include the same members who served on the RFQ evaluation committee. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering and land surveying, related services, construction or Public Contracting. At least one member of the evaluation committee must be an Authorized Agency employee. If the Authorized Agency procedure permits, the Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering and land surveying or related professions. The Authorized Agency must designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if the Proposer or any of Proposer's principals, partners or associates is a member of the Authorized Agency's RFP evaluation committee for the Contract.

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the RFP for the anticipated interview.

(C) The evaluation committee must provide to the Authorized Agency the results of the scoring and ranking for each Proposer.

(c) Initial Negotiations. If the Authorized Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(C) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(d) Subsequent Negotiations. The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with Section 4(c) of this Rule, until Negotiations result in a Contract. If Negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular formal Solicitation. Nothing in this Rule precludes the Authorized Agency from proceeding with a new formal Solicitation for the same Architectural, Engineering and Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0240

Protest Procedures

(1) RFP Protest and Request for Change. Consultants may submit a Written protest of anything contained in an RFP and may request a change to any provision, Specification or Contract term contained in an RFP, no later than seven (7) calendar Days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, Specifications or Contract terms. The Authorized Agency will not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection.

(a) In the event of an Award to a single Proposer, the Authorized Agency must provide to all Proposers a copy of the selection notice that the Authorized Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a Written protest of the selection to the Authorized Agency no later than seven (7) calendar Days after the date of

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the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(b) Multiple Awards. In the event of an Award to more than one Proposer, the Authorized Agency must provide to all Proposers copies of the selection notices that the Authorized Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a Written protest of the selection to the Authorized Agency no later than seven (7) calendar Days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked Proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers, otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. The Authorized Agency may not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of the Authorized Agency must resolve all timely submitted protests within a reasonable time following the Authorized Agency's receipt of the protest and once resolved, must promptly issue a Written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Authorized Agency must revise the RFP accordingly and must re-advertise the RFP in accordance with these Rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0250

Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

An Authorized Agency may cancel, delay or suspend a Direct Appointment or Solicitation, whether an informal selection procedure or formal selection procedure, or reject all Proposals, responses to RFQs, responses to other preliminary procurement documents, or any combination of the foregoing, if the Authorized Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Authorized Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs, or other preliminary procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary procurement documents.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0300

Contract Form; Prohibited Payment Methodology; Purchase Restrictions

(1) Contract Forms. The State Procurement Office or its delegatee must develop and maintain a standard Contract form and an Amendment form, which must be used by the Authorized Agencies in completing all Architectural, Engineering and Land Surveying and Related Services Contracts. These forms can be obtained from the State Procurement Office. Authorized Agencies must review the approved Contract form and Amendment form at least every two years. If upon review the Authorized Agency revises either form, the Authorized Agency must obtain approval from its Designated Procurement Officer for revised forms up to \$100,000 or approval from the Department of Justice for revised forms exceeding \$100,000, prior to using the revised Contract or Amendment form. In using the standard Contract form and standard Amendment form, Authorized Agencies must abide by the following Contract provisions:

(2) Except as otherwise allowed by law, the Authorized Agency must not enter into any Contract in which the compensation provisions expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(3) Except as otherwise allowed by law, an Authorized Agency must not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel Working on the Project and reimbursable expenses incurred during the performance of Work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying, and Related Services required under the Contract.

(4) Except in cases of Emergency or in the particular instances noted in the Subsections below, the Authorized Agency must not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the Authorized Agency from any Consultant under a Contract with an Authorized Agency to perform Architectural, Engineering and Land Surveying, and Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering and Land Surveying, or Related Services under a Contract with to perform Design-Build services as defined in OAR 125-249-0010(3) or Energy Savings Performance Contract services (see OAR 125-249-0670 and 125-249-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant according to applicable law governing the award of such Contracts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-248-0340

Contract Amendments

(1) An Authorized Agency may amend any Contract for Architectural, Engineering and Land Surveying and Related Services if the Authorized Agency, in its sole discretion, determines that the Amendment is within the Scope of the Solicitation Document and that the Amendment would not materially impact the field of competition for the Architectural, Engineering and Land Surveying Services or Related Services described in the final form of the original procurement document. In making this determination, the Authorized Agency must consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Authorized Agency reasonably believes that the number of Proposers would not significantly increase if the procurement document were revised to include the additional services.

(2) The Authorized Agency may amend any Contract if the additional services are required by reason of existing or new regulations or ordinances of federal, state or local agencies, and these existing or new regulations or ordinances affect performance of the Original Contract and were not cited in the original Request for Proposals or Contract or were enacted or amended after issuance of the original Request for Proposals or execution of the Original Contract.

(3) All Amendments to Contracts must be in Writing, must be signed by an authorized representative of the Consultant and the Authorized Agency and must receive all required approvals before the Amendments will be binding on the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0100

Application; Federal Override; Effective Date

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 249 apply to Public Improvement Contracts. Only specific Rules in this Division 249 apply to Public Contracts for Ordinary Construction Services as described in OAR 125-249-0140. In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 249 take precedence over the more general requirements of the Rules in Division 246.

(2) The Rules as a whole implement the Oregon Public Contracting Code (Code), as defined in ORS 279A.010. This Division 249 of the Rules specifically addresses matters covered in ORS Chapter 279C.005, 279C.010, 279C.300 through 279C.870. Rules related to Architectural, Engineering, Land Surveying, and Related Services are found in Division 248.

(3) According to OAR 125-246-0100 and except as otherwise expressly provided in ORS 279C.800 through 279C.870, applicable feder-

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al statutes and regulations govern when federal funds are involved and the federal statutes or regulations require additional conditions or conflict with the Code or with these Rules.

(4) These Division 249 Rules apply only to the above-described Public Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0140

Contracts for Construction Other Than Public Improvements

(1) Procurement under ORS Chapter 279B. According to ORS 279C.320, Public Contracts for ordinary construction Services that are not Public Improvement Contracts, may be procured and amended as general Trade Services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these Division 249 Rules. Emergency Contracts for construction Services are not Public Improvement Contracts and are regulated under ORS 279B.080.

(2) Application of ORS Chapter 279C and Division 249 Rules to Ordinary Construction Services. Non-procurement provisions of ORS Chapter 279C and these Division 249 Rules may still be applicable to the resulting Contracts for ordinary construction Services. See, for examples, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 510, 515, 520, 525, and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 555, 560 and 565); Subcontracts (ORS 279C.580 and 279C.585); Action on Payment Bonds (ORS 279C.600, 610, 615, 620 and 625); Termination (ORS 279C.650, 655, 660, 665 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.320

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration. An Authorized Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration must be made at an administrative level consistent with the Authorized Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency as that term is defined at ORS 279A.010(1)(f), and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration must be kept on file as a public record.

(2) Competition for Emergency Contracts. According to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Authorized Agency must ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers, or direct appointments without competition in cases of extreme necessity, in whatever Solicitation time periods the Authorized Agency considers reasonable in responding to the Emergency.

(3) Emergency Contract Scope. Although no dollar limitation applies to Emergency Contracts, the Scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) Emergency Contract Modification. Emergency Contracts may be modified by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(5) Excusing Bonds. According to ORS 279C.380(4) and this Rule, the Emergency declaration may also state that the Authorized Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the Procurement.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080, 279C.320, 279C.380(4)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) General. Public Improvement Contracts estimated by the Authorized Agency not to exceed \$100,000 (Threshold), may be Awarded in accordance with intermediate level procurement procedures for Competitive Quotes established by this Rule.

(2) Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity, responsibility and similar factors.

(3) Request for Quotes. Authorized Agencies must utilize Written requests for Quotes whenever reasonably practicable. Written request for Quotes must include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Authorized Agency must state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) Number of Quotes; Record Required. Authorized Agencies must seek at least three (3) competitive Quotes, and keep a Written record of the sources and amounts of the Quotes received. If three (3) Quotes are not reasonably available the Authorized Agency must make a Written record of the effort made to obtain those Quotes.

(5) Award. If awarded, the Authorized Agency must Award the Contract to the prospective Contractor whose quote will best serve the interests of the Authorized Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Authorized Agency must make a Written record of the basis for Award.

(6) Price Increases. Intermediate level Public Improvement Contracts obtained by Competitive Quotes may be increased above the original amount of Award by the Authorized Agency issuance of a Change to the Work or Amendment, according to OAR 125-249-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the Original Contract amount, when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work;

(b) Up to an aggregate Contract Price increase of 50% over the Original Contract amount, when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work and the head of the Authorized Agency or supervisor of the Designated Procurement Officer approves the increase; and

(c) An unlimited increase over the Original Contract amount, when the aggregate amount of the Contract, including all Changes to the Work and Amendments, does not exceed the Threshold stated in Section (1).

(7) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the Threshold stated in Section (1) are specifically authorized by the Code, when made in accordance with this Rule and OAR 125-249-0910. Accordingly, such Amendments are not considered new Procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.412

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. According to ORS 279C.365 and this Rule, the Solicitation Document must include the following:

(a) General Information:

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the Authorized Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile or electronic means (See OAR 125-249-0300 regarding Facsimile Bids or Proposals and OAR 125-249-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

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(G) The time and date of Closing after which an Authorized Agency will not accept Offers, which time must be not less than five (5) Days after the date of the last publication of the advertisement. Although a minimum of five (5) Days is proscribed, Authorized Agencies are encouraged to use at least a (fourteen) 14 Day Solicitation period when feasible. If the Authorized Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Authorized Agency must designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 125-249-0360. For timing issues relating to Addenda, see OAR 125-249-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder", as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Authorized Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148;

(K) A statement that the Authorized Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 125-249-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-249-0440(3));

(N) How the Authorized Agency will notify Offerors of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-249-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 125-249-0360.

(b) Evaluation Process:

(A) A statement that the Authorized Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the Authorized Agency's finding that it is in the public interest to do so;

(B) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Authorized Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and OAR 125-249-0620), along with the process the Authorized Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Authorized Agency must set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors must be objective, reasonable estimates based upon information the Authorized Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Authorized Agency must refer to the additional requirements of OAR 125-249-0650.

(c) Contract Provisions. The Authorized Agency must include all contract terms and conditions, including warranties, insurance and bonding requirements, that the Authorized Agency considers appropriate for the Public Improvement project. The Authorized Agency must also include all applicable contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts according to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) Maximum hours, holidays and overtime (ORS 279C.540);

(L) Time limitation on claims for overtime (ORS 279C.545);

(M) Prevailing wage rates (ORS 279C.800 to 279C.870);

(i) Fee paid to BOLI (ORS 279C.830);

(ii) BOLI Public Works bond (ORS 279C.830(3));

(N) Retainage (ORS 279C.550 to 279C.570);

(i) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(O) Contractor's relations with subcontractors (ORS 279C.580);

(P) Notice of claim (ORS 279C.605);

(Q) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(R) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor must not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Authorized Agency's prior Written consent. Unless otherwise agreed by the Authorized Agency in Writing, such consent must not relieve the Contractor of any obligations under the Contract. Any assignee or transferee must be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Authorized Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, must remain liable to the Authorized Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Authorized Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.110, 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005, 701.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0210

Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. An Authorized Agency must furnish "Notice," as set forth below in Section (2), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice must indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document.

(2) Advertising. According to ORS 279C.360 and this Rule, an Authorized Agency must advertise on ORPIN every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Chief Procurement Officer has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) The Authorized Agency must furnish Notice using ORPIN and may use any additional method determined to foster and promote competition, including:

(A) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(B) Placing a Notice on the Authorized Agency's Internet World Wide Web site; or

(C) Publishing a Notice in a newspaper of general circulation as described in ORS 279C.360(1).

(b) Authorized Agencies must publish advertisements utilizing ORPIN as required under Sections (2)(a). Authorized Agencies may also publish advertisements utilizing other forms of Electronic Advertisement, such as Authorized Agency and general circulation web sites, as permitted under Section (2)(a). Authorized Agencies may also publish advertisements utilizing at least one (1) newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Authorized Agency determines to be necessary or desirable to foster and promote competition.

(c) An Authorized Agency may publish by Electronic Advertisement if the Authorized Agency posts in its business office a notice that the Authorized Agency will publish advertisements for Offers by Electronic

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Advertisement. The notice must include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the Authorized Agency publishes Electronic Advertisements or alternatively, to the Web location where the Authorized Agency publishes information on accessing the Electronic Advertisement via Telnet; and

(d) In addition to the Authorized Agency's publication required under Subsection 2(a) or 2(b), the Authorized Agency must also publish advertisement for Offers in at least one (1) trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(e) All advertisements for Offers must set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, that must not be less than five (5) Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Authorized Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

(3) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(4) Minority, Women Emerging Small Business. State Authorized Agencies must provide timely notice of all Solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000. See ORS 200.035.

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

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.360 & 200.035

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0220

Prequalification of Offerors

(1) Prequalification. According to ORS 279C.430 and this Rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. An Authorized Agency may, by rule, resolution, ordinance or other regulation, require mandatory prequalification of Offerors. An Authorized Agency must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when an Authorized Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Authorized Agency must not consider an Offer from a Person that is not prequalified if the Authorized Agency required prequalification.

(b) Permissive Prequalification. An Authorized Agency may prequalify a Person for the Authorized Agency's Solicitation list, but in permissive prequalification the Authorized Agency must not limit distribution of a Solicitation to that list.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Department to perform Contracts, the Offeror must be rebuttably presumed qualified to perform similar Work for other Authorized Agencies.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the Authorized Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and Personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Authorized Agency. (See OAR 125-249-0390(2) regarding standards of responsibility).

(4) Notice of Denial. If a Person fails to prequalify for a mandatory prequalification, the Authorized Agency must notify the Person and specify the reasons under Section (3) of this Rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.430 & 279C.435

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0270

Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. An Authorized Agency may cancel a Solicitation for good cause if the Authorized Agency finds that

cancellation is in the public interest. The Authorized Agency's reasons for cancellation must be made part of the Solicitation file.

(2) Notice of Cancellation. If the Authorized Agency cancels a Solicitation prior to Opening, the Authorized Agency must provide Notice of cancellation in accordance with OAR 125-249-0210(1). Such notice of cancellation must:

(a) Identify the Solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any re-Solicitation.

(3) Disposition of Offers:

(a) Prior to Offer Opening. If the Authorized Agency cancels a Solicitation prior to Offer Opening, the Authorized Agency will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Authorized Agency will open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Authorized Agency rejects all Offers, the Authorized Agency will retain all such Offers as part of the Authorized Agency's Solicitation file.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0280

Offer Submissions

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-249-0410. The Authorized Agency may elect to accept the Offer at any time during the specified period, and the Authorized Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Despite the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 125-249-0410, the Authorized Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with the Proposer. See OAR 125-249-0650 on Requests for Proposals and OAR 125-249-0290 on Bid or Proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.

(2) Responsive Offer. An Authorized Agency may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions according to OAR 125-249-0650, an Offeror must not make an Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges they have read and understand the terms and conditions contained in the Solicitation Document and that they accept and agree to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under OAR 125-249-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing.

(5) Instructions. Offerors must submit and Sign their Offers in accordance with the Solicitation Document. Offerors must initial and submit any corrections or erasures to their Offers prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) Forms. Offerors must submit their Offers on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(7) Documents. Offerors must provide the Authorized Agency with all documents and Descriptive Literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the Authorized Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Authorized Agency must not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. An Authorized Agency may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Authorized Agency will dispose of Product Samples, or

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return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers:

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the Authorized Agency, whichever is applicable.

(b) The Authorized Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) Receipt of Offers. The Offerors are responsible for ensuring that the Authorized Agency receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0290

Bid or Proposal Security

(1) Security Amount. If an Authorized Agency requires Bid or Proposal security, it must be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. An Authorized Agency must not use Bid or Proposal security to discourage competition. The Authorized Agency must clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror must forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless an Authorized Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security according to ORS 279C.390, the Authorized Agency must require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Authorized Agency, of more than \$100,000. See ORS 279C.365(6). The Authorized Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Authorized Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. An Authorized Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) Return of Security. An Authorized Agency must return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Authorized Agency may return the Bid or Proposal security of unsuccessful Offerors prior to award if the return does not prejudice Contract Award and the security of at least the Bidders with the three (3) lowest Bids, or the Proposers with the three (3) highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0310

Electronic Procurement

(1) General. Authorized Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to award electronically as provided by ORS 279C.410(7).

(2) Alternative Procedures. In the event that an Authorized Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract, by electronic means, as allowed under ORS 279C.365(1)(d), it must first promulgate supporting procedures substantially in conformance with OAR 125-247-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapters 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) Interpretation. Nothing in this Rule must be construed as prohibiting Authorized Agencies from making Procurement Documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0390

Offer Evaluation and Award; Determination of Responsibility

(1) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (see ORS 279C.375(3)(a)) or is ineligible for award as a nonresident education service district (see Oregon Laws 2005, Chapter 413). The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple contract awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Authorized Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Authorized Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and Personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has a satisfactory record of contract performance. An Authorized Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Authorized Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The Authorized Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Authorized Agency must make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if an Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Authorized Agency. An Authorized Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 125-249-0370 may be used to determine an Offeror's integrity. The Authorized Agency must make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is qualified legally to contract with the Authorized Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Authorized Agency concerning responsibility, the Authorized Agency must base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. Authorized Agencies must document their compliance with ORS 279C.375(2) and the above sections of this Rule on a Responsibility Determination Form substantially as set forth in ORS 279C.375(2)(c).

(4) Authorized Agency Evaluation. The Authorized Agency must evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Authorized Agency must not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions:

(a) The Authorized Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to award:

(A) Demonstration, inspection or testing of a product prior to award for characteristics such as compatibility, quality or Workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Authorized Agency must evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Authorized Agency must reject an Offer providing any product that does not meet the Solicitation Document requirements. An Authorized Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

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(6) Evaluation of Bids. The Authorized Agency must use only objective criteria to evaluate Bids as set forth in the ITB. The Authorized Agency must evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must add a percentage increase to the Bid of a non-resident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, an Authorized Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification must not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications must become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Authorized Agency must not negotiate Scope of Work or other terms or conditions under an Invitation to Bid process prior to award.

(7) Evaluation of Proposals. See OAR 125-249-0650 regarding rules applicable to Requests for Proposals.

(8) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070, OL 2005, Ch. 413

Stats. Implemented: ORS 279C.335, 279C.365, 279C.375, 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0395

Notice of Intent to Award

(1) Notice. At least seven (7) days before the Award of a Public Improvement Contract, the Authorized Agency must issue to each Offeror, or post electronically or otherwise, a notice of the Authorized Agency's intent to Award the Contract. See ORS 279C.375(2). This requirement does not apply to a Public Improvement Contract:

(a) Excepted or exempted from competitive bidding under ORS 279C.335; or

(b) Awarded through an Intermediate Procurement (informal competitive quotes) with a value up to \$100,000.

(2) Form and Manner of Posting. The form and manner of posting notice must conform to customary practices within the Authorized Agency's procurement system, and may be made electronically.

(3) Finalizing Award. The Authorized Agency's Award is not final until the later of the following:

(a) Seven (7) Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Authorized Agency provides a Written response to all timely-filed protests that denies the protests and affirms the Award.

(4) Prior Notice Impractical. Posting of notice of intent to award is not required when the Authorized Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Procurement file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0430

Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Authorized Agency's Cost Estimate, prior to Contract Award the Authorized Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Authorized Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of OAR 125-249-0360 do not apply to Negotiations under this Rule.

(2) Definitions. The following definitions apply to this Rule:

(a) "Cost Estimate" means the Authorized Agency's most recent pre-Bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for Negotiation in the RFP process, relating to the details of contract performance as specified in OAR 125-249-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans,

Specifications, or other contract requirements which may be made, consistent with industry practice, under the Original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Authorized Agency, must be excluded from consideration.

(4) Scope of Negotiations. Authorized Agencies must not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Authorized Agency to participate in the Bidding process had the change been made during the Solicitation process rather than during Negotiation. This Rule must not be construed to prohibit Solicitation of trade subcontractors.

(5) Discontinuing Negotiations. The Authorized Agency may discontinue Negotiations at any time, and must do so if it appears to the Authorized Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to re-bid any portion of the project, or to obtain subcontractor pricing information upon request, must be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder according to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) Public Records. To the extent that a Bidder's records used in contract Negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the Negotiation process has been terminated, at which time they are subject to disclosure according to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.340

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0460

Performance and Payment Security; Waiver

(1) Public Improvement Contracts. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the State Procurement Office exempts a Contract or classes of Contracts from the required performance bond and payment bond according to ORS 279C.390, the Contractor must execute and deliver to the Authorized Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Authorized Agency, of more than \$100,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for Contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see OAR 125-249-0815 and BOLI rules in OAR Chapter 839, division 25, regarding the separate requirement for Public Works bond.

(2) Other Construction Contracts. An Authorized Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements must be expressly set forth in the Solicitation Document.

(3) Requirement for Surety Bond. The Authorized Agency must accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e. the Authorized Agency may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) Time for Submission. The apparent successful Offeror must promptly furnish the required performance security upon the Authorized Agency's request. If the Offeror fails to furnish the security as requested, the Authorized Agency may reject the Offer and award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Authorized Agency's discretion, the Offeror must forfeit its Bid or Proposal security.

(5) Public Improvement Contracts Under \$100,000. An Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, in its discretion, waive the bid security requirements and per-

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formance and payment requirements if the amount of the Contract for the Public Improvement is less than \$100,000.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375, 279C.380 & 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0470

Substitute Contractor

If the Contractor provided a performance bond, the Authorized Agency may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor must perform all remaining contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and must not be subject to the competitive procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.370, 279C.375, 279C.380, 279C.390

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0630

Findings, Notice and Hearing

(1) General. This Rule provides guidance to the Agencies for making a request for an Exemption to the Chief Procurement Officer in accordance with ORS 279C.335 and OAR 125-246-0170(3)(c).

(2) Findings: Required Information. The statutory definition of "Findings" at ORS 279C.330 means the justification for an Agency's conclusion that includes, "but is not limited to," information regarding eight identified areas.

(3) Findings Addressing Cost Savings. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate." Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings must relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings" requirement where an Alternative Contracting Method has not been previously used, the Authorized Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) Findings Regarding Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) Specificity of Findings.

(a) Method. Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized.

(b) Project(s). The Findings must clearly and generally identify the Project with respect to its defining characteristics. Those characteristics must include at least: Project descriptions, locations, anticipated time periods, anticipated contract values or the range of values, and other significant factors that distinguish the Project(s) from an Authorized Agency's overall construction program.

(c) Contract. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(d) Basis for an Order. The Chief Procurement Officer relies upon the representations and accuracy of the Authorized Agency's Findings in subsections (a) and (b), which form the basis for and are incorporated by reference in any subsequent Exemption Order.

(6) Prior Review of Draft Findings. Agencies must submit draft Findings to the State Procurement Office for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). Agencies must also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

(7) Class Exemptions. In making the findings supporting a class exemption the Authorized Agency must clearly identify the class with respect to its defining characteristics. Those characteristics must include some combination of Project descriptions or locations, time periods, contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from an Authorized Agency's overall construction program. Classes must not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(8) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, an Authorized Agency must give notice and hold a public hearing as required by ORS 279C.335(5). The hearing must be for the purpose of receiving public comment on the Authorized Agency's draft Findings.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.065, 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0645

Requests for Qualifications (RFQ)

As provided by ORS 279C.405(1), Authorized Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two (2) step solicitation process, in which distribution of the RFPs will be limited to the highest ranked firms submitting statements of qualification, Authorized Agencies must first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, include the RFP, specifically state that RFPs will be distributed only to the highest ranked firms in the RFQ process and also provide within the RFQ a protest provision substantially in form of OAR 125-249-0450(5) regarding protests of the competitive range. Thereafter, Authorizing Agencies may distribute RFPs to those highest ranked firms without further advertisement of the Solicitation.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.405

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0800

Required Contract Clauses

Authorized Agencies must include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in OAR 125-249-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.505 - 279C.545, 279C.800 - 279C.870

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

125-249-0860

Public Works Contracts

(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and Rules, every Public Works Contract must contain the following provisions:

(a) Authorized Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

(f) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The prevailing rate of wage, as required by ORS 279C.830(1)(a):

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(A) physically contained within or attached to hard copies of procurement Specifications;

(B) included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or

(C) when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If applicable, BOLI determines (in a separate publication) the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality. The same options for inclusion of wage rate information stated in subsection (3)(a) of this Rule apply. See BOLI rules at OAR 839-025-0020 and 0035.

(c) Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.800 - 279C.870

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

**Department of Administrative Services,
Capitol Planning Commission
Chapter 110**

Rule Caption: Rules for Area Plan Development Standards.

Adm. Order No.: CPC 3-2008

Filed with Sec. of State: 6-17-2008

Certified to be Effective: 6-17-08

Notice Publication Date: 5-1-2008

Rules Adopted: 110-010-0034, 110-010-0039

Rules Amended: 110-010-0030

Rules Repealed: 110-010-0035, 110-010-0040, 110-010-0045, 110-010-0050, 110-010-0055, 110-010-0060

Subject: This rule amendment relates to the revision of the Development Standards adopted by the Capitol Planning Commission and last updated in 1988. The rule revises the current Area Plan Development Standards formerly known as the Development Standards affecting future development and issues in the Salem Area.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

110-010-0030

Definitions

As used in OAR Chapter 110, the following terms have the meanings indicated, unless the context requires otherwise:

(1) “Agency” means any state officer, board, commission or department, or any division thereof, authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.028.

(2) “Area Plan” means a plan setting policies and standards to guide development of a specific geographical area within the city of Salem.

(3) “CPAB” means the Capital Projects Advisory Board.

(4) “DAS Director” means the Director of the Department of Administrative Services or his/her designee.

(5) “Department” means the Department of Administrative Services.

(6) “Project” means expenditures for capital construction or for capital improvement and adoption or approval of area plans in the area described by ORS 276.028, and within the following limitations:

(a) Capital Construction includes expenditures related to construction or remodeling of physical facilities with a project cost of \$500,000 or more;

(b) Capital Improvement includes expenditures related to construction or remodeling of physical facilities with a project cost of more than \$5,000, but less than \$500,000;

(c) A project does not include:

(A) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(B) Repair or maintenance which does not substantially change the existing use of space, which does not add additional square footage to a building, and which does not change exterior building design;

(C) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(7) Notwithstanding the provisions of subsection (6)(c) of this rule, capital improvement or capital construction which includes interior remodeling or repair for the purpose of converting an existing use to a use relating to the housing of Correctional or Forensic Psychiatric Inmates shall be a “project” and shall require DAS Director review and approval.

Stat. Auth.: ORS 183, 197 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; CPC 1-1983, f. & ef. 11-29-83; COC 2-1988, f. & cert. ef. 6-23-88; CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 3-2008, f. & cert. ef. 6-17-08

110-010-0034

Development Standards Contained in Area Plans

Development standards applicable to new projects specific to each area plan shall be included in the area plans, while development standards common to all properties subject to area plans shall be included within the Salem Area Coordination Plan. Development standards shall address, but not be limited to:

(1) Setback requirements;

(2) Height, bulk, and lot coverage limitations;

(3) Landscaping requirements; and

(4) Requirements for the protection of the surrounding community environment.

Stat. Auth.: ORS 276.098

Stats. Implemented:

Hist.: CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 3-2008, f. & cert. ef. 6-17-08

110-010-0039

Criteria and Authority to Permit Divergence

The CPAB may recommend and the DAS Director may permit a divergence from the provisions contained in the Design Standards contained in the adopted Area Plan if:

(1) The property and proposed improvements are challenged by unusual topographic, environmental, functional, or aesthetic circumstances; or

(2) The proposed alternative achieves the purposes of the Design Standards contained in the Area Plan as well or better than a compliant alternative.

(3) Permitting a divergence will not, under the circumstances of the particular case, create material adverse aesthetic, function, or health and welfare effects on neighboring owners or others coming to or passing by the Property.

(4) Each divergence request shall be considered solely on its own merits; permitting of a divergence in one situation shall not change the Design Standards contained in the Area Plan or compel the DAS Director to permit any further divergence.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 3-2008, f. & cert. ef. 6-17-08

Rule Caption: Rules for Adoption of the Southeast Salem Area Plan and Fairview/Hillcrest Area Plan.

Adm. Order No.: CPC 4-2008

Filed with Sec. of State: 6-17-2008

Certified to be Effective: 6-17-08

Notice Publication Date: 5-1-2008

Rules Amended: 110-040-0012, 110-040-0014

Rules Repealed: 110-040-0015, 110-040-0020

Subject: This rule amendment relates to the revision of the Southeast Salem Area Plan, formerly known as the Oregon State Corrections Area Plan adopted by the Capitol Planning Commission May 8, 1985. The rule revises the current Area Plan adopting a new plan and standards affecting future development and uses in the Southeast Salem Area.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

110-040-0012

Southeast Salem Area Plan

The Southeast Salem Area Plan, 2008 is hereby adopted by reference. This Area Plan replaces the Oregon State Corrections Area Plan, 1985.

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

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 2-1985, f. & ef. 5-13-85; CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 4-2008, f. & cert. ef. 6-17-08

110-040-0014

Fairview/Hillcrest Area Plan

The Fairview/Hillcrest Area Plan, 1985, is hereby adopted by reference.

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

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 2-1985, f. & ef. 5-13-85; CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; CPC 4-2008, f. & cert. ef. 6-17-08

ADMINISTRATIVE RULES

Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Establishes Oregon Educators Benefit Board's policies regarding members' declination of coverage.

Adm. Order No.: OEBB 8-2008

Filed with Sec. of State: 6-25-2008

Certified to be Effective: 6-26-08

Notice Publication Date: 5-1-2008

Rules Adopted: 111-030-0001, 111-030-0005

Subject: Establishes Oregon Educators Benefit Board's policies regarding members' declination of coverage.

Rules Coordinator: Rose Mann—(503) 378-4606

111-030-0001

Development of OEBB Plan Designs

(1) As used in the section, "comparable plan design" means the actuarial value of the OEBB plan design is within 2.5 percent (higher or lower) than a current district plan.

(2) OEBB will develop plan designs for medical, pharmaceutical, dental and vision benefit plans that are comparable to the plan designs provided by Subject Districts prior to entering the OEBB.

(3) OEBB will develop comparable plan designs by: Collecting the medical, pharmaceutical, dental and vision plan designs provided by Subject Districts that will be entering OEBB on October 1, 2008, October 1, 2009, and October 1, 2010.

(4) Following initial implementation of the OEBB benefit plans on October 1, 2008, OEBB will re-evaluate its plan designs for the October 1, 2009, and October 1, 2010, plan year start dates to determine if the Subject District plan design was included in the comparability assessment performed for plan design development in 2008.

(a) If the Subject District plan design was considered during the initial plan design process no further analysis will be conducted.

(b) If the plan design was not considered during the initial plan design process OEBB will:

(A) Calculate the actuarial value for the Subject District plan design using an industry-standard actuarial model; and

(B) Identify whether a current OEBB plan design has an actuarial value 2.5 percent higher or lower than the Subject District plan design.

(5)(a) If none of the OEBB plan designs has an actuarial value within 2.5 percent higher or lower than the Subject District plan and the Subject District has 100 or more enrollees, OEBB will develop and implement a plan design with an actuarial value of 2.5 percent higher or lower than the Subject District's plan unless;

(b) There is an OEBB plan that has an actuarial value that is more than 2.5 percent higher than the Subject District's plan and it is determined that OEBB can still meet the comparable cost requirement.

Stat. Auth: ORS 243.860 to 243.886

Stats. Implemented: ORS 243.864

Hist.: OEBB 8-2008, f. 6-25-08, cert. ef. 6-26-08

111-030-0005

Medical, Dental and Vision Benefit Plans Selection through OEBB

(1) As used in the section, "employee group" means employees of similar employment type, for example administrative, represented classified, nonrepresented classified, confidential, represented licensed, or nonrepresented licensed. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.

(2) OEBB will offer a range of medical, pharmaceutical, dental and vision benefit plans that provide the flexibility to choose between a number of high-quality benefit plan options.

(3) The process for selection of medical, pharmaceutical, dental and vision plans offered by OEBB will include:

(a) Release of preliminary designs and costs for all medical, pharmaceutical, dental and vision plan options to participating districts no later than 30 days prior to final selection date. The total number offered may vary each year.

(b) Districts select the medical, pharmaceutical, dental and vision plan options to be offered to each employee group using an existing plan selection process. The specific number of allowed selections and selection parameters will be reviewed, considered and determined on an annual basis by OEBB.

(c) Plan selections for medical, pharmaceutical, dental and vision benefit coverages must be submitted in writing to OEBB no later than June 30, 2008, for the 2008-09 plan year and May 31 each year that follows. District submissions must include the specific plan selections for each employee group and must be authorized by a district official.

Stat. Auth: ORS 243.860 to 243.886

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

Hist.: OEBB 8-2008, f. 6-25-08, cert. ef. 6-26-08

Rule Caption: Establishes Oregon Educators Benefit Board's process for developing benefit plan designs comparable to district plan designs and the participating districts' selection of OEBB benefit plans.

Adm. Order No.: OEBB 9-2008

Filed with Sec. of State: 6-25-2008

Certified to be Effective: 6-26-08

Notice Publication Date: 5-1-2008

Rules Adopted: 111-040-0050

Subject: Establishes Oregon Educators Benefit Board's process for developing benefit plan designs comparable to district plan designs and the participating districts' selection of OEBB benefit plans.

Rules Coordinator: Rose Mann—(503) 378-4606

111-040-0050

Declination of coverage

As used in this section: "Opting out of coverage" means that an individual elects not to enroll in a medical plan and is eligible to receive a portion of the cash contribution or other type of remuneration as provided for under a collective bargaining agreement, documented district policy, or employment contract. "Waiving benefits" means that an individual elects not to enroll in any one of the benefit plans available under the OEBB-sponsored benefits program and is not eligible to receive any portion of a cash contribution or other type of remuneration.

(1) Unless otherwise specified in a collective bargaining agreement, documented district policy or employment contract in effect on July 1, 2008, an eligible employee may opt out of the OEBB-sponsored medical benefit plans. Eligible employees electing to opt out must:

(a) Maintain coverage under another employer-sponsored group medical benefit plan;

(b) Meet the requirements of the district opt out program in which they are participating;

(c) Submit their election to opt out through the OEBB benefit management system; and

(d) If requested, provide proof of current coverage under another employer-sponsored group medical benefit plan.

(2) Eligible employees electing to opt out of the OEBB-sponsored medical benefit plans may enroll in the dental and vision benefit plans.

(3) The level and type of funds and allowances retained by eligible employees and districts as a result of opt out programs are determined through collective bargaining agreements and documented district policies.

(4) A participating district will provide OEBB with a written description of its opt out program upon request.

(5) An eligible employee may waive medical, dental and vision or any combination of benefits provided under the OEBB-sponsored benefits program.

(6) Elections to opt out of the medical benefit plans or waive benefits must be made at the time of hire, when initially meeting eligibility, during an open enrollment period, or following a midyear benefit plan change.

(7) An eligible employee previously opting out of coverage or waiving benefits may enroll in benefit plans consistent with a midyear benefit plan change or during an open enrollment period.

(a) Coverage for previously OEBB-eligible employees or a previously OEBB-eligible dependent enrolling in the dental and/or vision plans during an open enrollment period will be limited to routine and preventive care for the first 12 months and subject to a 12-month waiting period for orthodontia coverage.

(b) Eligible employees who enroll in the dental or vision plans, or add previously OEBB-eligible dependents to the dental and vision plans, due to a loss of other coverage will not be subject to waiting periods.

Stat. Auth.: ORS 243.860 to 243.886

Stats. Implemented: ORS 243.864

Hist.: OEBB 9-2008, f. 6-25-08, cert. ef. 6-26-08

Department of Agriculture Chapter 603

Rule Caption: Updates scientific name of codling moth in Hood River control area rule.

Adm. Order No.: DOA 16-2008

Filed with Sec. of State: 7-11-2008

Certified to be Effective: 7-11-08

Notice Publication Date: 5-1-2008

Rules Amended: 603-052-0265

ADMINISTRATIVE RULES

Subject: The proposed change would update the scientific name of codling moth in Hood River control area rule: Codling Moth *Carpocapsa pomonella* would be changed to *Cydia pomonella*.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0265

Definitions

As used in OAR 603-052-0260 to 603-052-0280, unless the context requires otherwise:

(1) “Disease Organisms” means the diseases *Pseudomonas* blight (*Pseudomonas syringae*), *Coryneum* blight (*Coryneum carpophilum*), Peach leaf curl (*Taphrina deformans*), Fire blight (*Erwinia amylovora*), and Apple scab (*Venturia inaequalis*).

(2) “Host Plant” or “Host Tree” means Pear (*Pyrus* spp.), Quince (*Cydonia* spp.), Apple (*malus* spp.), Peach (*Prunus* spp.), and Apricot (*Prunus* spp.), Hawthorn (*Crataegus* spp.), and may include other rosaceous hosts of Apple Maggot as deemed necessary by the Oregon Department of Agriculture.

(3) “Insect” means Codling Moth (*Cydia pomonella*), Oriental Fruit Moth (*Grapholitha molesta*), Pear Psylla (*Psylla pyricola*), San Jose Scale (*Aspidiotus perniciosus*), Shot Hole Borer (*Scolytus rugulosus*), Apple Maggot (*Rhagoletis pomonella*) and Peach Twig Borer (*Anarsia lineatella*).

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 –561.600, 570.305, 570.405 & 570.410 – 570.415

Hist.: AD 818(6-66), f. 4-12-66, ef. 4-27-66; AD 874(5-68), f. 4-1-68, ef. 4-15-68; AD 1106(27-76), f. & ef. 9-15-76; AD 14-1981, f. 7-24-81, ef. 8-7-81; DOA 16-2008, f. & cert. ef. 7-11-08

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Rule Caption: Requires specific identifier ear tag and brand on imported Canadian cattle.

Adm. Order No.: DOA 17-2008

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 7-15-08

Notice Publication Date: 6-1-2008

Rules Amended: 603-011-0255

Subject: On November 19, 2007, the federal rules for importing Canadian cattle changed. The new federal rule allows importation of Canadian cattle that can live out their lives as breeding animals in Oregon herds. This rule is to address the need to establish criteria for permanent identification of cattle imported from Canada. It requires that all cattle imported from Canada be born after 1999, that is, after the effective date of the Canadian ban on high-risk feed to cattle. It requires each animal to be individually identified with an official Canadian ear tag with a unique number. It requires each animal be branded with a CAN brand on the right hip that will be easily visible on the live animal and on the carcass before skinning.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0255

Importation of Animals Into Oregon; General Provisions

(1) Except as otherwise provided in this rule, all livestock shipped or in any manner transported or moved into Oregon shall be accompanied by an Oregon permit. No exemption applies to international shipments. The permit number shall be recorded on the waybill or health inspection document, or be in the possession of the driver of the vehicle or person in charge of the animals.

(2) No livestock that are affected with or that have been known to be exposed to any infectious, contagious, or communicable disease, shall be shipped or in any manner moved or transported into Oregon except as authorized in following sections.

(3) No livestock that originates from a quarantined area shall be shipped or in any manner moved or transported into Oregon unless a permit has been first obtained from the Department and the animals from such quarantined area have been approved for interstate shipment by the U.S. Department of Agriculture.

(4)(a) At the time an Oregon permit is requested, the Department may require that a health inspection document be obtained at the point of origin. Such document shall accompany the applicable animals into Oregon. Notwithstanding other rules to the contrary, the Department may allow any inspection, test, or treatment required as a condition to importation into Oregon, to be performed at the first point of destination within this state if it is determined by the Department that such inspection, test, or treatment cannot feasibly be performed at the point of origin and that the performance of such inspection, test, or treatment at the point of destination will not create a disease hazard to the livestock of this state;

(b) If a health inspection document is required, a copy thereof shall be immediately forwarded to the Chief Animal Health Official of the state of origin and thence to the Oregon State Veterinarian.

(5) The following are exempted from the requirement to obtain an Oregon importation permit:

(a) Animals being shipped, moved, or transported directly (without diversion) to a licensed Oregon slaughtering establishment. Animals consigned for slaughter and received in such slaughtering establishments may not be released from such establishments except by special permission from the State Veterinarian;

(b) Livestock originating in other states and shipped to a state-federal approved livestock auction market in Oregon. Such livestock shall be required to comply with all other applicable administrative rules;

(c) Livestock being transported through the state without interruption, other than stops for feed, water and rest;

(d) Any resident animal leaving and returning to Oregon within 30 days; and

(e) Dogs, cats, reptiles, and non-poultry birds traveling interstate.

(6) Requirements for the exhibition of livestock shall comply with the directives of the Department for that specific exhibit.

(7)(a) Canadian cattle imported into Oregon must be born after 1999, individually identified by an official Canadian ear tag, applied before the animal's arrival at the port of entry into the United States, that is traceable to the premises of origin of the animal and be listed on the Certificate of Veterinary Inspection.

(b) Canadian cattle imported into Oregon must have a hot iron brand of CAN properly applied and easily visible on the live animal and on the carcass before skinning. The CAN brand must be not less than 2 inches nor more than 4 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae).

(8) Livestock being shipped or in any manner transported or moved into the State of Oregon without a permit and a health inspection document, when required, shall be held in quarantine at the owner's risk and expense until released by the Department. This section shall not be construed as a waiver of enforcing the provisions of ORS 596.990 for violation of regulations relating to importation of livestock.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 9-1977, f. & ef. 4-6-77; AD 7-1981, f. & ef. 5-13-81; AD 3-1984, f. & ef. 1-20-84; DOA 1-2000, f. & cert. ef. 1-4-00; DOA 18-2007(Temp), f. 11-9-07, cert. ef. 11-15-07 thru 5-10-08; Administrative correction 5-20-08; DOA 17-2008, f. & cert. ef. 7-15-08

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Department of Agriculture, Oregon Alfalfa Seed Commission Chapter 624

Rule Caption: Sets per diem stipend rates for commissioners that correspond with ORS 292.495; amends commissioner term limits.

Adm. Order No.: OASC 1-2008

Filed with Sec. of State: 7-8-2008

Certified to be Effective: 7-15-08

Notice Publication Date: 6-1-2008

Rules Adopted: 624-040-0010, 624-040-0020, 624-040-0030

Rules Amended: 624-030-0010

Subject: Sets per diem stipend, reimbursement for hiring a substitute and allowable travel reimbursements for commissioners. Per diem reimbursement for hiring a substitute correspond with limit set on ORS 292.495. Removes term limits for commissioners.

Rules Coordinator: Edith Kressly—(541) 881-1345

624-030-0010

Number of Commissioners, Terms

The Oregon Alfalfa Seed Commission will consist of five (5) commissioners appointed by the Director of the Oregon Department of Agriculture for a term or three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term.

Stat. Auth.: ORS 576.206

Stats. Implemented: ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04; OSAC 1-2008, f. 7-8-08, cert. ef. 7-15-08

624-040-0010

Per Diem Compensation

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

ADMINISTRATIVE RULES

(2) The rate of compensation is limited to \$30 per day, pursuant to ORS 292.495(1).

(3) In order to receive compensation, a member must submit to the Oregon Alfalfa Seed Commission a written claim for compensation by the 10th day of the calendar month following the month for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 292.495, 576.206 & 576.416

Stats. Implemented:

Hist.: OASC 1-2008, f. 7-8-08, cert. ef. 7-15-08

624-040-0020

Reimbursement of Travel and Other Expenses

(1) Subject to sections (2)–(6) of this rule, a member of the Oregon Alfalfa Seed Commission, including a member employed in full-time public service, may receive actual and necessary travel and other expenses actually incurred in the performance of the member's official duties.

(2) In order to receive reimbursement of actual and necessary travel and other expenses, a member must submit to the Oregon Alfalfa Seed Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 10th day of the calendar month following the month in which the member incurred the expense. The claim for reimbursement must include the following information for each expense:

(a) Date on which the member incurred the expense; and

(b) Nature of the expense; and

(c) Amount of the expense.

(3) An expense that exceeds \$200.00 dollars must be authorized by the Oregon Alfalfa Seed Commission before a member incurs the expense.

(4) For the purposes of this rule, "travel and other expenses" are limited to reasonable expenses. An expense is reasonable if:

(a) It is an actual expense incurred by a member in carrying out official commission business, which is within the member's scope of responsibilities; and

(b) The expense is necessary to enable the member to carry out official commission business.

(5) For the purposes of this rule, "travel and other expenses" includes:

(a) Meals.

(b) Overnight lodging.

(c) Transportation.

(d) Postage.

(e) Cost of attending an event or phone calls associated with promotion of a commodity, such as a festival, stock show, county fair or state fair.

(6) For the purposes of this rule, "travel and other expenses" does not include:

(a) Attendance at a sporting event, concert, theatrical performance, movie, or dance venue, including such events that occur at a fair, festival or stock show.

(b) In-room movie rental.

(c) Long distance telephone charges at a place of lodging that are not associated with Oregon Alfalfa Seed Commission business.

(d) Use of a gym or health club.

(e) Cost of a gift for a host, business associate, commission member or employee, or family member.

(f) Alcoholic beverages.

Stat. Auth.: ORS 292.495, 576.206, 576.265, 576.311, 576.416 & 576.440

Stats. Implemented:

Hist.: OASC 1-2008, f. 7-8-08, cert. ef. 7-15-08

624-040-0030

Reimbursement for Hiring a Substitute

(1) As used in OAR 624-040-0020, "other expenses" includes expenses incurred by a member of the Oregon Alfalfa Seed Commission in employing a substitute to perform duties, including personal duties, normally performed by the member, which the member is unable to perform because of the performance of official duties and which, by the nature of such duties, cannot be delayed without risk to health or safety.

(2) The amount that a member may be reimbursed for expenses incurred in employing a substitute must not exceed \$25 per day, pursuant to ORS 292.495(3).

Stat. Auth.: ORS 292.495

Stats. Implemented:

Hist.: OASC 1-2008, f. 7-8-08, cert. ef. 7-15-08

Department of Agriculture, Oregon Grains Commission Chapter 679

Rule Caption: Per Diem Compensation.

Adm. Order No.: GRAIN 1-2008

Filed with Sec. of State: 7-11-2008

Certified to be Effective: 8-1-08

Notice Publication Date: 5-1-2008

Rules Adopted: 679-030-0050

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

(2) The rate of compensation is limited to \$30 per day, pursuant to ORS 292.495(1)

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

Rules Coordinator: Tammy Dennee—(541) 276-4609

679-030-0050

Commissioner Per Diem and Reimbursements

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

(2) The rate of compensation is limited to \$30 per day, pursuant to ORS 292.495(1)

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

Stat. Auth.: ORS 292.495(1)

Stats. Implemented: ORS 292.495(1)

Hist.: GRAIN 1-2008, f. 7-11-08, cert. ef. 8-1-08

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

Rule Caption: Clarifies how a local government may assume responsibility for administering an electrical program from division.

Adm. Order No.: BCD 8-2008(Temp)

Filed with Sec. of State: 6-19-2008

Certified to be Effective: 6-19-08 thru 12-15-08

Notice Publication Date:

Rules Amended: 918-308-0010, 918-308-0020, 918-308-0040

Subject: This temporary rule clarifies the process and procedures under which a local government may assume responsibility to administer and enforce the electrical program from the state. This rule-making clarifies the different assumption process local government follows for electrical program assumption in the division administered regions because of the first-hand knowledge that the division has in the operation of its programs as opposed to local government programs.

Rules Coordinator: Shauna Parker—(503) 373-7438

918-308-0010

Standards for Delegation

Administration and enforcement of the electrical program shall only be delegated under ORS 479.855 to municipalities meeting the following minimum performance standards:

ADMINISTRATIVE RULES

(1) The municipality shall be ready, willing and able to fully operate the electrical program on the effective date of delegation, July 1, except when a municipality is assuming the program from the division.

(2) The municipality shall create and maintain minimum services which are at least reasonably the same level of electrical administrative, enforcement and inspection services presently provided to the area. Minimum administrative, enforcement and inspection services include the "Ongoing Requirements" in the Electrical Delegation Rules.

(3) Operation of the program shall be financially feasible without unduly increasing short-term and long-term cost of electrical inspection services to the public, both in the areas delegated and, if applicable, the remaining program to the surrounding area.

(4) The municipality shall demonstrate its ability to carry out the proposed electrical program.

(5) The requirements in the Electrical Delegation Rules are in addition to rules adopted by the Department in OAR 918-020-0070 through 918-020-0220 for municipalities that apply to undertake inspection programs.

Stat. Auth.: ORS 479.855

Stats. Implemented: ORS 479.855

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-300-0100; BCD 8-2008(Temp), f. & cert. ef. 6-19-08 thru 12-15-08

918-308-0020

Check List for Application for Delegation of Electrical Program

Except when a municipality requests responsibility for an electrical program administered by the division, a municipality seeking delegation or renewal of delegation of the electrical program shall:

(1) Comply with ORS 455.148 and 455.150; and

(2) If the municipality is applying for delegation for the first time, it shall file an application for delegation of the electrical program under the Electrical Delegation Rules. The application shall:

(a) Be filed by the governing body of the municipality by October 1 prior to the year for which delegation is sought;

(b) Be based on a resolution of the municipality formally authorizing the application, and representing if the application is granted, the municipality and all persons under it will comply with and be bound by the Electrical Delegation Rules;

(c) Include a proposed ordinance for administration and enforcement of the electrical program;

(d) Include an operating plan showing it meets the minimum standards for delegation in the Electrical Delegation Rules; and

(e) Note any differences in service or inspections from present services and inspections to be provided on delegation.

(3) If the municipality is requesting its first renewal, it shall file relevant amendments or updates to its initial application and note this is its first renewal application.

(4) A municipality requesting delegation of the electrical program administered by the division must meet the requirements of ORS 455.148 (7) and 11(c). Notwithstanding the timelines in ORS 455.148 (11)(c), a municipality assuming the program from the division must submit an assumption plan prior to administering the program.

Stat. Auth.: ORS 479.855

Stats. Implemented: ORS 479.855

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-300-0130; BCD 28-2002(Temp), f. & cert. ef. 10-1-02 thru 3-29-03; BCD 36-2002, f. 12-31-02, cert. ef. 1-1-03; BCD 8-2008(Temp), f. & cert. ef. 6-19-08 thru 12-15-08

918-308-0040

Check List for Operating Plan and Documentation

An "operating plan" is the municipality's strategy for carrying out the goals and objectives for its electrical inspection program. "Strategy" means what, how and when it will be done. The operating plan for a municipality assuming the electrical program from another municipality shall include:

(1) Strategies and written agreements, where relevant, for handling the transition from the losing jurisdiction to applicant including arrangements made for:

(a) Open permits and inspections ongoing as of July 1;

(b) Enforcement actions pending on July 1;

(c) Being fully operational on July 1 including staffing and training of permit and other personnel;

(d) Informing contractors and others of the changeover of inspecting jurisdictions, jurisdictional boundaries and requirements covering permits and procedures, inspection procedures, temporary permit procedures, plan review requirements and fees; and

(e) Employees presently providing the electrical inspection services in the area covered by the application and how applicant will deal with ORS 236.605:

(A) If the matter was resolved by the applicant and losing jurisdiction, or with the jurisdiction and the inspector, provide a copy of the agreement and a statement by applicant's municipal counsel that all employee rights under ORS 236.605 were preserved;

(B) Any assertion that ORS 236.605 is not applicable to the transaction must be from applicant's municipal counsel.

(2) Strategies for electrical operations including:

(a) Inspectors and inspections:

(A) When will certified electrical inspectors be hired, how will applicant be operational by July 1 and how will inspectors be used to carry out the program;

(B) Where more than one inspection office is involved, how will inspectors be deployed;

(C) If the electrical program is offered jointly with another municipality or parts of another municipality, the agreement between municipalities, which ordinances will apply in the different areas, what offices and staff assignments will be made and what boundaries are involved; and

(D) If electrical services will be provided by a contractor, the operating plan to be followed including inspection, coverage of prolonged absences and administration and an agreement by the contractor to be bound by the Electrical Delegation Rules.

(b) Code interpretations. How will code interpretations be provided and when will electrical inspectors be available to provide them. This should cover each office;

(c) Conflict resolution. How will conflicts in electrical code interpretations between inspectors or inspectors and the public be resolved at the local level, what rights of appeal will the public be advised of, and how will conflicts of interest involving staff be resolved;

(d) Plan review. Will plan review be required and if so which installations require plan review;

(e) Turn-around time. What will be the response time to inspection requests, what correction notices will be used, when will reinspection be required, and how and where will permit and inspection records be kept. If a contractor is used, will contractor records be made available at the municipality's offices in the event of a review of electrical operations. Attach related forms to be used;

(f) Enforcement. How and when will license checks and permit and code compliance be monitored, who will be involved and how will violations be enforced. If the electrical inspector is not full time with the municipality, who will do license checks and other enforcement during the inspector's absence;

(g) Use of labels. What labels will be used and what internal procedures will be followed for minor installation labels and bulk labels if the municipality uses bulk labels;

(h) Temporary permits. What temporary permit procedures are adopted by the municipality to deal with OAR 918, division 309 or for days during a regular workweek the municipality is not open for permit sales;

(i) Forms and records. What electrical permit application, appeal and other forms will be used and where will formal permit and inspection records be kept. Attach forms;

(j) Accounting. How will electrical revenues, direct and indirect including interest earned, be segregated from other revenues and accounted for; how will payments from and charges to that account be accounted for; and if there are electrical surpluses, will these be carried over for the electrical program between fiscal years. How will overhead, including all administrative costs, be allocated;

(k) Projections. What is applicant's projection for electrical income and expenses for the fiscal period for which the application is filed and what assumptions, such as growth or increased inspections, are relied on. What are the projections for following periods if losses are projected for the first period. If losses are projected, how these will be funded. If a contractor is used, show projections for the municipality and the contractor.

(l) Contingency plan. A plan for "back-up" inspection services.

Stat. Auth.: ORS 479.855

Stats. Implemented: ORS 479.855

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-300-0150; BCD 8-2008(Temp), f. & cert. ef. 6-19-08 thru 12-15-08

Rule Caption: Adopts ASCE 7-05 Supplement No. 2, minimum base shear equation for buildings.

Adm. Order No.: BCD 9-2008(Temp)

Filed with Sec. of State: 6-25-2008

Certified to be Effective: 6-25-08 thru 12-22-08

Notice Publication Date:

Rules Amended: 918-460-0015

Subject: Rule amends the Oregon Structural Specialty Code (OSSC) to incorporate a revision in Supplement No. 2 of ASCE 7-05 establishing the minimum base shear equation for buildings.

This rule amends the reference standard ASCE 7-05, in the Oregon Structural Specialty Code by adopting ASCE 7-05 supplement No. 2, which changes the minimum base shear equation for buildings and other structures.

Rules Coordinator: Shauna Parker—(503) 373-7438

ADMINISTRATIVE RULES

918-460-0015

Amendments to the Structural Specialty Code

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

(2)(a) Minimum base shear equation. Effective June 25, 2008 the referenced standard ASCE 7-05 in the **Oregon Structural Specialty Code** is amended as follows:

(b) The base shear equation 12.8-5 of ASCE 7-05 is deleted and replaced by the following base shear equation per ASCE 7-05, Supplement No. 2: $C_s = 0.044SDSI \geq 0.01$.

[Publications: Publications referenced are available for review at the division. See division web site for information on where to purchase publications.]

Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 447.247, 455.110 & 455.112

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004,f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 22-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 23-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 1-2006, f. & cert. ef. 2-1-06; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 9-2008(Temp), f. & cert. ef. 6-25-08 thru 12-22-08

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Rule Caption: Revises continuing education requirements for licenses in the boiler and pressure vessel program.

Adm. Order No.: BCD 10-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Amended: 918-030-0120, 918-030-0125, 918-030-0130, 918-030-0135

Subject: The rule revises continuing education requirements for license holders in the boiler and pressure vessel program. The rule sets requirements for the following license categories: Class 2 is set at eight hours of continuing education during each three-year cycle; Class 3, Class 4, Class 5, Class 5A, and Class 5B are set at twenty-four (24) hours of continuing education during each three-year cycle.

Rules Coordinator: Shauna Parker—(503) 373-7438

918-030-0120

Licenses Requiring 24 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 24 hours of approved continuing education, including one code-change course if required by the appropriate board:

- (1) General Supervising Electrician;
- (2) Limited Supervising Electrician;
- (3) General Journeyman Electrician;
- (4) Journeyman Plumber;
- (5) Class 3 Boiler Building Service Mechanic;
- (6) Class 4 Boiler Boilermaker;
- (7) Class 5 Boiler Pressure-Piping Mechanic;
- (8) Class 5A Boiler Process Piping Mechanic; and,
- (9) Class 5B Boiler Refrigeration Piping Mechanic.

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08

918-030-0125

Licenses Requiring 16 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 16 hours of approved continuing education, including one code-change course if required by the appropriate board:

- (1) Limited Residential Electrician.
- (2) Limited Journeyman Manufacturing Plant Electrician.

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08

918-030-0130

Licenses Requiring 8 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 8 hours of approved continuing education, including one code-change course if required by the appropriate board:

- (1) Limited Maintenance Electrician;
- (2) Class A Limited Energy Technician;
- (3) Class B Limited Energy Technician; and,
- (4) Solar Heating and cooling System Plumbing Installer; and,
- (5) Class 2 Boiler Pressure Vessel Installer.

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08

918-030-0135

Licenses Requiring 4 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 4 hours of approved continuing education, including one code-change course if required by the appropriate board:

- (1) Limited Renewable Energy Technician; and
- (2) Limited Journeyman Sign Electrician.

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 10-2008, f. 6-30-08, cert. ef. 7-1-08

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Rule Caption: Clarifies the requirements for reciprocal electrical and plumbing licensing.

Adm. Order No.: BCD 11-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 918-030-0045

Rules Repealed: 918-030-0045(T)

Subject: This rule clarifies the qualifying criteria for persons applying for reciprocal electrical or plumbing licensing.

Rules Coordinator: Shauna Parker—(503) 373-7438

918-030-0045

Oregon Reciprocal License Requirements

(1) The purpose of these rules is to assist the citizens of Oregon and reciprocating states with substantially similar electrical and plumbing licensing criteria to obtain a license without examination.

(2) For the purposes of this rule the following definitions apply:

(a) "Reciprocal Applicant" means a person applying for a reciprocal license.

(b) "Reciprocal License" means a license issued by Oregon to a person who qualifies under these rules.

(c) "Reciprocal State" means a state with a reciprocal licensing agreement with Oregon.

(d) "Work Experience" refers to work experience obtained through a registered apprenticeship program. Work experience may also refer to work experience verified in the manner established by OAR 918-030-0040 or 918-030-0050.

(3) To qualify for a license under these rules, a reciprocal applicant must prove that they:

(a) Possess an equivalent or higher license from the reciprocal state that is current and active with no violations or conditions attached within the past three (3) years;

(b) Qualified for the equivalent or higher license from the reciprocal state through required work experience and by passing an examination in the reciprocal state with a score of 75 percent or better;

(c) Have worked a minimum of six (6) months (1,000 hours) under the license in the reciprocal state;

(d) Have not taken and failed the Oregon examination within the past two (2) years for the license type they are applying to reciprocate.

Stat. Auth.: ORS 455.110 & 455.117

Stats. Implemented: ORS 455.117 & 670.380

Hist.: BCD 1-2008(Temp), f. & cert. ef. 1-3-08 thru 7-1-08; BCD 11-2008, f. 6-30-08, cert. ef. 7-1-08

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Rule Caption: Amends division rules for fee refunds and deletes erroneous citation to a DMV definition.

Adm. Order No.: BCD 12-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

ADMINISTRATIVE RULES

Rules Amended: 918-001-0240, 918-225-0605, 918-515-0300, 918-525-0510, 918-550-0010, 918-600-0030, 918-650-0030

Rules Repealed: 918-001-0230

Subject: Repeals unnecessary language related to fee payment and refunds; provides for refunds of amounts over \$25.00 without a written request for refund; repeals erroneous citation to a DMV statute.

Rules Coordinator: Shauna Parker—(503) 373-7438

918-001-0240

Refunds

(1) As required by ORS 293.445 moneys received in excess of the amount legally due and payable to the division, or in which the division determines it has no legal interest, shall be refunded. However, as authorized by 293.445, for sums of \$25.00 or less the division will only refund the money upon request by the person who paid the money or the person's legal representative. Refund requests must be made within three years of the date that the money was paid to the division.

(2) "Amounts legally due and payable" includes but is not limited to, fees for license, renewal license, permit or plan review applications, regardless of whether or not application review results in the issuance of a license or permit.

Stat. Auth.: ORS 293.445

Stats. Implemented: ORS 293.445

Hist.: BCA 23-1992, f. 12-24-92, cert. ef. 1-1-93; BCD 1-1998, f. 1-28-98, cert. ef. 4-1-98; BCD 7-2001, f. 6-15-01, cert. ef. 7-1-01; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08

918-225-0605

Installation, Alteration and Repair Permit Procedures

The following permit procedures are established for installation, alteration or repair of boilers, pressure vessels or pressure piping systems by licensed contractors.

(1) Obtaining permits. Permit application forms for installation, alteration or repair of boilers, pressure vessels or pressure piping systems must be prepaid. Prenumbered permit application forms may be purchased individually or in bulk, from the Building Codes Division upon payment of \$16.50 for each form.

(2) Prepaid permit application forms do not authorize work until the contractor provides the required information to the division for review and approval. Prior to beginning the intended installation, repair or alteration, the contractor shall notify the deputy or special inspector who will inspect the work. Work shall not begin until the inspector has reviewed and approved the work to be performed.

(3) Filing and processing of permits.

(a) Prenumbered permit applications can be sent to the Building Codes Division Salem office, by mail or by facsimile transmission, or by any other method that delivers the permit application or a facsimile of the application to the division.

(b) The applicant may request approval notification, such as by mail, collect delivery by courier or facsimile transmission, and where the authorization should be delivered.

(c) Upon processing, the notification of approval or denial shall be shown on the permit application. The expenses of delivery other than by mail or facsimile transmission shall be prepaid or sent collect to the person requesting the delivery mode. The approval or denial shall be delivered to the applicant following the instructions provided. If no return instructions are received, the notification shall be by mail.

(4) Upon receipt of permit approval:

(a) The signed approval or facsimile transmittal showing an authorized signature shall be posted at the job site before beginning the work; or

(b) The approved permit number shall be posted at the job site and signed by the contractor.

(5) A permit issued under this rule is not transferable.

(6) This rule does not change the provisions for emergency permits in ORS 480.630(7). It is recommended, but not required, that emergency permits be reviewed and coordinated with the inspector responsible to inspect the completed work.

Stat. Auth.: ORS 480.630

Stats. Implemented: ORS 480.630

Hist.: BCD 10-1995, f. & cert. ef. 8-25-95; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08

918-515-0300

Requirements for Installer Certification Tags

(1) Licensed manufactured dwelling installers and limited skirting installers installing manufactured dwellings, cabanas, tie-downs, ERB's and skirting shall affix a Division-issued certification tag to the manufactured dwelling, cabana or skirting upon completion of the installation, and prior to inspection by the authority having jurisdiction.

(2) Certification tags may be purchased in bulk by licensed installers, manufactured dwelling dealers and limited skirting installers. An applica-

tion to purchase certification tags shall be submitted to the Division in duplicate and accompanied by the appropriate tag fee.

(3) Only licensed installers and licensed limited skirting installers may be assigned certification tags by the dealer or Division. Certification tags shall be affixed only by licensed installers and licensed limited skirting installers upon completion of the installation.

(4) The person purchasing certification tags from the Division shall be responsible for their security, use and reporting.

(5) The Division may sell a maximum two-month supply of certification tags to a manufactured dwelling dealer based on monthly installations and certification tag reports submitted to the Division.

(6) The Division or a manufactured dwelling dealer may issue a maximum of 30 certification tags to an installer at one time and a maximum of 30 certification tags to a limited skirting installer at one time.

(7) Certification tags assigned to licensed installers and limited skirting installers can only be transferred by the Division.

(8) If an installer or limited skirting installer license is suspended, revoked or expires, all unused certification tags assigned to that person shall be returned to the Division.

(9) If a manufactured dwelling dealer is no longer in business or changes ownership, all unused certification tags assigned to the original dealer shall be returned to the Division.

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.240

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08

918-525-0510

Fees

The following fees apply to the division only and do not apply to municipalities.

(1) Inspection Fee:

(a) \$45 for an inspection requiring one hour or less;

(b) \$22.50 for every 30 minutes or fraction exceeding one hour, including travel time and mileage; and

(c) Mileage shall be paid at the rate established by the Oregon Department of Administrative Services.

(2) Field Technical Service Fee:

(a) \$45 for service requiring one hour or less;

(b) \$22.50 for every 30 minutes or fraction exceeding one hour, including travel time and mileage; and

(c) Mileage shall be paid at the rate established by the Oregon Department of Administrative Services.

(3) Out-of-State Inspection or Field Technical Service Fee: In addition to the hourly charges of subsections (a) and (b) of this section, the division shall be reimbursed for actual cost based on published air fare and/or equivalent, plus necessary surface transportation and cost for food and lodging consistent with the allowances established by the Oregon Department of Administrative Services for authorized state employee travel.

(4) Reinspection Fee: Same fee schedule as noted in sections (1), (2), and (3) of this rule.

(5) Quality Assurance Manual Fee: \$30 for initial review of manuals and \$20 for review of manual supplements. This fee includes the initial issuance of five insignia to certified repair operations.

(6) Plan Renewal Fee: \$15 for administrative costs of renewing plans.

(7) Plan Supplement Fee: Same fee schedule as noted in sections (13) through (18) of this rule.

(8) Change of Name, ownership or Address Fee: \$20 for each change.

(9) Insignia Label Fee: \$25 per insignia for manufacturers and \$5 for a lot of five insignias for repair operations.

(10) Replacement Insignia Fee: \$25 per insignia for manufacturers and \$5 for a lot of five insignias for repair operations.

(11) Registration Fee: \$25 per manufacturer or operation.

(12) Annual Registration Renewal Fee: \$20 per manufacturer or operation.

(13) Plan Filing Fee: \$10 for each submittal.

(14) Plan Approval Model Fee: \$15.

(15) Plumbing Supplement Fees:

(a) Drain, waste and Vent: \$20 for each plan submitted;

(b) Potable Water: \$10 for each plan submitted.

(16) Electrical Supplement Fees:

(a) 12 Volt: \$20 for each plan submitted;

(b) 120 to 240 Volt: \$20 for each plan submitted;

(c) Generator: \$10 for each plan submitted.

(17) Mechanical Supplement Fee: \$10 for each plan submitted.

(18) Model Floor Plan Supplement Fee: \$15 for each plan submitted and \$5 for each model number supplement.

(19) Design Option, Plan Approval Model, or Number Change Fee: \$20.

ADMINISTRATIVE RULES

(20) Recreational Vehicle Visual Inspection Fee: \$30. This fee includes the insignia label, one initial inspection and one reinspection.

(21) Recreational Vehicle Alteration Permit Fee: \$30. This fee includes one initial inspection and one reinspection.

(22) Permit Reinspection Fee: \$25.

(23) Park Trailer Installation Fee: \$105 per installation. This fee includes inspection of the stand and lot preparation; all support blocking; flood and wind anchoring devices; perimeter skirting; under-floor access and ventilation; temporary steps; and plumbing; mechanical and electrical connections, when all work is ready for inspection at one time.

(24) Park Trailer Installation Reinspection Fee: \$85 per reinspection.

(25) Municipalities shall establish their own fee schedule or may adopt the division's fee schedule through local ordinance for the installation of park trailers.

(26) Fees for the construction or installation of accessory buildings and accessory structures shall be those required by the authority having jurisdiction.

(27) A municipality's permit and plan review fees shall be reasonable and shall not exceed the cost of administering the program per ORS 455.210.

Stat. Auth.: ORS 446.160 & 446.176

Stats. Implemented: ORS 446.160 & 446.176

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 14-1996(Temp), f. & cert. ef. 7-1-96; BCD 24-1996, f. & cert. ef. 11-8-96; BCD 12-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 23-1998, f. 11-9-98, cert. ef. 11-15-98; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 1-2005, f. & cert. ef. 3-1-05; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08

918-550-0010

Definitions

For the purposes of this division of rules, the following definitions apply, unless the context requires otherwise:

(1) "Division" means the appropriate division within the Department of Consumer and Business Services, Building Codes Division, or the county who is acting on behalf of the department.

(2) "Land leaseholder" means the holder of a recorded leasehold estate of 20 years or more, if the lease specifically permits the owner of the manufactured structure to obtain an exemption under ORS 820.510(b).

(3) "Legal description of the manufactured structure" means the model year, make, width, length and vehicle identification number (VIN).

(4) "Lessor" means a person who transfers the right to possession and use of property under a lease as shown in the record of the county in which it is recordable by law.

(5) "Lien holder" means a person who holds a claim, encumbrance or charge on property for payment of a debt or obligation as shown in the record of the county in which it is recordable by law.

(6) "Mortgagee" means a person who takes, holds or receives a mortgage (such as a bank or lending institution).

(7) "Owner" when referring to the owner of a manufactured structure does not include a security interest holder or lessee, unless the owner of the manufactured structure is a land leaseholder.

(8) "Release" means the written or electronic relinquishment, concession, or giving up of right, claim or interest in a manufactured structure.

(9) "Security interest holder" means a person who holds an interest in property that secures payment or performance of an obligation pursuant to a security agreement.

(10) "Trust deed beneficiary" means the person designated in a trust deed as the person for whose benefits a trust deed is given. A trust deed conveys an interest in real property to a trustee in trust, to cure performance of an obligation owed to the beneficiary.

Stat. Auth.: ORS 446.646

Stats. Implemented: ORS 446.646

Stat. Auth.: ORS 446.646

Stats. Implemented: ORS 446.646

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08

918-600-0030

Fees — Expiration — Validity

(1) Construction Permit Fee. The construction permit fee shall be as set forth in sections (5) and (6) of this rule or as established by the municipality administering the manufactured dwelling or mobile home park program and shall be paid to the authority having jurisdiction prior to beginning construction. Valuation of construction cost is to be determined by the authority having jurisdiction.

NOTE: The construction permit does not include building permits, manufactured dwelling installation permits, electrical permits, or plumbing permits.

(2) Return of Plans. The authority having jurisdiction should, within 30 working days from the date of submission of a complete set of plans, approve or return the plans with noted modifications to the applicant.

(3) Plans Review Fee. The plan review fee shall be 65 percent of the permit fee and shall be paid to the authority having jurisdiction at the time of submitting plans and specifications for review.

(4) Expiration and Validity of Plans and Permits:

(a) Expiration of plan approval shall be one year after the date of approval if no construction permit is issued. The authority having jurisdiction may extend the time for action by the applicant for a period not exceeding 180 days upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new review fee;

(b) Expiration of Construction Permits. Construction permits issued by the authority having jurisdiction under the provisions of these rules shall expire if the construction authorized by such permit is not commenced within 180 days from the date of such permit, or if the construction authorized by such permit is suspended for a period of 180 days, or abandoned at any time after the work is commenced. Before such construction can be recommenced, a new permit shall be first obtained to do so and the fee therefore shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such permitted work and provided, further, that the duration of the suspension of work or abandonment has not exceeded one year;

(c) Validity. The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of these rules. The issuance of a permit based upon plans and specifications shall not prevent the issuing agency from thereafter requiring the correction of errors in said plans or construction;

(d) Suspension or Revocation. The authority having jurisdiction may, in writing, suspend or revoke a permit issued under provisions of these administrative rules whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any provisions of these administrative rules.

(5) Area Development Fee. The area development fee shall be determined from Table 1 using the valuation for all facilities for which the permit is issued. The fees in Table 1 shall be based on valuation Table 2 or be determined by the applicant with documentation acceptable to the authority having jurisdiction. Permit fees shall be paid to the authority having jurisdiction before any work begins.

NOTE: The Area Development Permit does not include permits or related fees for buildings, manufactured dwelling installations, accessory buildings or structures, mechanical, plumbing or electrical systems; boilers, elevators, or permits required by other agencies.

(6) Other Inspection Fees:

(a) Inspections outside of normal business hours (Minimum charge — two hours), \$50/hr;

(b) Reinspection fee, \$50/ea;

(c) Inspections for which no fee is specifically indicated (Minimum charge — one-half hour), \$50/hr;

(d) Additional plan review required by changes, additions or revisions to approved plans (Minimum charge — one-half hour), \$50/hr;

(e) Consultation Fee (Minimum charge — one hour) \$30/hr;

(f) A special inspection is required and a special inspection fee shall be paid before a permit may be issued for work started without a permit. The special inspection fee shall be equal to and in addition to the amount of the permit fee required by these rules;

(g) In addition to the called-for inspections, the authority having jurisdiction may make or require additional inspections to ensure compliance with the provisions or the code and laws;

(h) A reinspection fee may be assessed for each inspection or reinspection when the work for which an inspection is called is not completed or when required corrections are not made. [Tables not included. See ED. NOTE.]

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

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

Stat. Auth.: ORS 183.325 - 183.410 & 446.160

Stats. Implemented: ORS 446.160

Hist.: DC 66, f. & ef. 1-20-76; DC 3-1979, f. 1-5-79, ef. 2-1-79; DC 13-1981, f. 10-30-81, ef. 11-1-81; DC 12-1982, f. 3-17-82, ef. 3-18-82; DC 11-1983, f. & ef. 5-5-83; Renumbered from 814-028-0040; BCA 15-1991(Temp), f. 6-7-91, cert. ef. 7-1-91; BCA 35-1991, f. 10-23-91, cert. ef. 10-31-91; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08

918-650-0030

Fees — Expiration — Validation

(1)(a) Area Development Fee. The area development fee shall be determined from **Table 1** using the valuation for all facilities for which the permit is issued. The fees in **Table 1** shall be based upon valuation **Table 2** for recreation parks or be determined by the applicant with documentation acceptable to the issuing authority. Permit fees shall be paid to the issuing authority before any work begins. [Tables not included. See ED. NOTE.]

(b) Plans Review Fee. The area development Plan Review Fee shall be 65 percent of the area development permit fee set forth in subsection (1)(a) of this rule and shall be paid to the issuing authority when plans and specifications are submitted for review;

ADMINISTRATIVE RULES

(c) Other Fees:

- (A) Inspections outside of normal business hours (minimum charge — two hours), \$50/hour;
- (B) Reinspection fee, \$50/hour;
- (C) Inspection for which no fee is specifically indicated (minimum charge — one-half hour), \$50/hour;
- (D) Additional plan review required by changes, additions or revisions to approved plans (minimum charge — one-half hour), \$50/hour;
- (E) Consultation fee (minimum one hour), \$30/hour.

(2) Other Fees:

(a) A special inspection is required and a special inspection fee shall be paid before a permit may be issued for work started without a permit. The special inspection fee shall be equal to and in addition to the amount of the permit fee required by these rules;

(b) Other Inspection Fees. In addition to the called for inspections, the issuing authority may make or require inspections of any construction work to confirm compliance with the provisions of this code and other laws which are enforced by the code enforcement agency;

(c) Reinspection Fees. A reinspection fee may be assessed for each inspection or reinspection when the work for which inspection is called is not complete or when corrections called for are not made.

NOTE: This subsection is not intended to require reinspection fees the first time a job is rejected for failure to comply with the requirements of this code, but is to control the practice of calling for inspections before the job is ready for such inspection or reinspection.

(3) Expiration and Validity of Plans and Permits:

(a) Expiration of Plan Approval. Area Development plan approval shall expire one year after the date that the approval is granted if no area development permit is issued. Upon receipt of a written request from the applicant the issuing authority may extend the time for action by the applicant for a period of not to exceed 180 days. To renew action on an application after the expiration of a plan approval, the applicant shall resubmit plans and pay a new plan review fee;

(b) Expiration of Area Development Permit. An area development permit issued under OAR chapter 918, division 650 shall expire if the work it authorizes is not commenced within 180 days from the date of issuance of the permit, or if the work is suspended or abandoned for 180 days at any time after it is commenced. A permittee holding an unexpired permit may apply for an extension of the time within which the work may be commenced under that permit. The time for action by the permittee shall not exceed 180 days. Requests for extensions shall be in writing, and no permit shall be extended more than once. If such work is not recommenced, before a permit or extension expires a new permit shall be obtained. The fee therefor shall be one-half the amount required for the first permit, provided that:

(A) No changes have been made in the original plans and specifications; and

(B) The duration of the suspension of work or abandonment has not exceeded one year.

(c) Validity. The issuance or granting of an area development permit or approval of area development plans and specifications shall not be construed to be a permit for, or approval of, any violation of any of the provisions of OAR Chapter 918, Division 650. The issuance of a permit based upon plans and specifications shall not prevent the issuing agency from later requiring the correction of errors in such plans;

(d) Suspension or Revocation. The issuing authority may, in writing, suspend or revoke an area development permit issued under provisions of OAR chapter 918, division 650 when the permit is issued in error or on the basis of incorrect information supplied, or in violation of any provision of OAR chapter 918, division 650, or any other ordinances.

(4) County Fees. Counties shall not, for the kind of permits provided for by this section, enact or enforce any ordinance, rule or regulation fixing any permit fee that is higher than the fees provided by this section unless the county has the prior approval of the Administrator to do so. The Administrator shall approve any such fees if the Administrator finds, after notice and hearing, that the proposed fee or fees are reasonable and necessary to provide funds for the county to pay the expenses of carrying out effective enforcement of OAR chapter 918, division 650 that are its responsibility to enforce.

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

Stat. Auth.: ORS 183.325 - 183.410, 455.170, 455.680, 456.755, 456.770 & 456.837

Stats. Implemented: ORS 455.680

Hist.: BCA 10-1987, f. & ef. 9-18-87; Renumbered from 814-029-0075; BCA 16-1991(Temp), f. 6-7-91, cert. ef. 7-1-91; BCA 36-1991, f. 10-23-91, cert. ef. 10-31-91; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08

Rule Caption: Amends rules and Oregon Residential Specialty Code sections relating to moisture content in construction materials.

Adm. Order No.: BCD 13-2008(Temp)

Filed with Sec. of State: 7-3-2008

Certified to be Effective: 7-3-08 thru 12-30-08

Notice Publication Date:

Rules Amended: 918-480-0010

Subject: Rule amends the Oregon Residential Specialty Code in order to clarify a provision that requires contractors to provide written notification that the moisture content of wood framing members does not exceed 19%. Clarifies that moisture content of wood framing members is not subject to inspection by the authority having jurisdiction.

Rules Coordinator: Shauna Parker—(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, a descriptive caption and a short description of the amendment.

(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 are adopted as the plumbing provisions of the **Oregon Residential Specialty Code**; and

(b) The **2008 Edition of the NFPA 70, National Electrical Code** and amended by the division are adopted as the electrical provisions of the **Oregon Residential Specialty Code**. See OAR chapter 918, division 305 for Oregon amendments to **NFPA 70, National Electrical Code**.

(c) Effective April 1, 2007 Appendix N, Low-Rise Multiple-Family Dwelling Construction is moved from the 2005 Oregon Residential Specialty Code to the **2007 Oregon Structural Specialty 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 designed to the 2008 Oregon Residential Specialty Code must use the plumbing and electrical provisions adopted in this rule.

(4) Effective July 3, 2008, the **2008 Oregon Residential Specialty Code** is amended as follows:

(a) Section R 109.1.4.1 is deleted and replaced with the following: The requirement in R318.2 that all moisture-sensitive wood framing members used in construction shall have a moisture content of not more than 19 percent of the weight of dry wood framing members is not subject to inspection by the authority having jurisdiction.

(b) Section R318.2 is amended to read: Moisture content. Prior to issuance of the insulation/vapor barrier approval required by R109.1.5.2 of this code:

(A) All moisture-sensitive wood framing members used in construction shall have a moisture content of not more than 19 percent of the weight of dry wood framing members.

(B) The general contractor or the owner who was issued the structural permit shall notify the building official on a division approved form that the contractor or the owner who was issued the structural permit is aware of and has taken steps to meet the requirement in paragraph (A).

[Publications referenced are available for review at the division. See division web site for information on where to purchase publications.]

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

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

Rule Caption: Changes disclosure requirements for franchise sales to be consistent with new federal regulation.

Adm. Order No.: FCS 5-2008

Filed with Sec. of State: 6-26-2008

Certified to be Effective: 6-26-08

Notice Publication Date: 6-1-2008

Rules Amended: 441-325-0010, 441-325-0020, 441-325-0030, 441-325-0040, 441-325-0050

ADMINISTRATIVE RULES

Subject: The Federal Trade Commission (FTC) recently adopted updated regulations governing the sale of franchises that become mandatory by June 30, 2008. Among other things, these updated regulations specify the types of disclosures a seller provides to a prospective purchaser. Administrative rules adopted by Oregon covering disclosure forms would be inconsistent with the FTC rules as of June 30, 2008. These rules make changes in the disclosure requirements for franchise sales in Oregon to remain consistent with federal requirements. Seller of a franchise in Oregon need only meet the requirements of the FTC federal regulations in terms of disclosure.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-325-0010

Definitions

All words and phrases in OAR chapter 441, division 325, have meaning given them in ORS 650.005.

Stat. Auth.: ORS 650

Stats. Implemented: ORS 650.005

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; CC 20, f. 12-12-74, ef. 1-11-75; CC 28, f. 4-9-76, ef. 4-16-76; CC 9-1981, f. & ef. 11-23-81; Renumbered from 815-040-0050; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 5-2008, f. & cert. ef. 6-26-08

441-325-0020

Pre-Sale Disclosure Requirements

(1) No franchisor shall sell or offer to sell a franchise in this state unless the franchisor delivers to the prospective franchisee a disclosure document required by 16 CFR pt. 436.

(2) The franchisor must deliver the disclosure document and all proposed agreements relating to the sale of the franchise to the prospective franchisee at least 14 calendar days before the prospective franchisee executes any agreement with the franchisor relating to the sale of the franchise or at least 14 calendar days before the prospective franchisee tenders or is required to tender to the franchisor any consideration for the franchise including refundable deposits, whichever occurs first.

(3) Failure to timely provide the disclosure document and all proposed agreements required under this rule is a violation of ORS 650.020(1).

(4) Compliance with this rule shall not be construed to exempt any person engaged in the sale of a franchise in this state from making such other disclosures as are material.

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

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.020

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0055; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 9-1994, f. & cert. ef. 8-1-94; FCS 1-1995(Temp), f. & cert. ef. 3-29-95; FCS 5-2008, f. & cert. ef. 6-26-08

441-325-0030

Exemptions to Disclosure Requirements

The sale of or offer to sell a franchise is exempt from OAR 441-325-0020 if any of the following circumstances apply:

(1) The sale or offer to sell is exempt or excluded from delivery of a disclosure document under 16 CFR § 436.8(a).

(2) The sale or offer to sell is a renewal, extension, amendment or modification of an existing franchise agreement if there is:

(a) No interruption in the operation of the franchise relationship;

(b) No material change adverse to the franchisee in the franchise relationship; and

(c) No material change adverse to the franchisee in the disclosure information previously furnished to the franchisee.

(3) The sale or offer to sell is the sale of or offer to sell one or more additional franchises to an existing franchisee and the franchisor furnished a disclosure document to the franchisee in connection with the prior sale and there has been no material change adverse to the franchisee in the disclosure information previously furnished to the franchisee;

(4) The sale or offer to sell is a sale or offer to sell by a franchisee for the franchisee's own account of a franchise or an entire area franchise if:

(a) The sale or offer to sell is not effected by or through the franchisor. A sale is not effected by or through a franchisor merely because the franchisor has a right to approve or disapprove a different franchisee, requires the tender of a reasonable transfer fee, or requires appropriate documents executed;

(b) The franchisor does not aid in the sale;

(c) The sale is an isolated sale, and not a part of a plan of distribution of franchises; and

(d) At least 14 calendar days before the prospective purchaser executes any agreement with the franchisor relating to the sale, or tenders or is required to tender to the franchisee any consideration for the franchise or area franchise including any refundable deposit, whichever occurs first, the selling franchisee or subfranchisor has provided the prospective purchaser full access to the books, records, and disclosure documents of the franchise business.

(5) The sale or offer to sell is by a court appointed fiduciary or pursuant to a court order.

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.005, 650.020 & 650.050

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; CC 9-1981, f. & ef. 11-23-81; Renumbered from 815-040-0060; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 5-2008, f. & cert. ef. 6-26-08

441-325-0040

Offer or Sale of Franchise

The offer or sale of a franchise by a franchisee for his own account or the offer or sale of the entire area franchise owned by a subfranchisor for his own account, is exempted from the provisions of ORS chapter 650 if sale is not effected by or through a franchisor, and the franchisor does not participate or aid in the sale thereof. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.005 & 650.020

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0065; FCS 5-2008, f. & cert. ef. 6-26-08

441-325-0050

Relationship to Securities Law

A franchisor must meet the requirements of ORS 59.005 to 59.451, 59.991 and 59.995 if any part of a franchise offering may be considered a security.

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 59.015

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0070; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 5-2008, f. & cert. ef. 6-26-08

Rule Caption: Adopts content of report of mortgage banker or broker's residential mortgage activity.

Adm. Order No.: FCS 6-2008(Temp)

Filed with Sec. of State: 6-26-2008

Certified to be Effective: 6-26-08 thru 12-1-08

Notice Publication Date:

Rules Adopted: 441-865-0024

Rules Suspended: 441-865-0022

Subject: This temporary rule implements Senate Bill 1064, passed in the 2008 supplemental legislative session. SB 1064 requires the Department of Consumer and Business Services to require reports from mortgage bankers and mortgage brokers concerning their residential mortgage activity, which includes specifying what loan information mortgage brokers and mortgage bankers must submit. Residential mortgage brokers and mortgage bankers need guidance on what information they must submit on the initial report, which necessitate the adoption of a temporary rule.

The adoption of OAR 441-865-0022 raised concerns that the collection of some portions of the information the department requested may be too costly to accomplish through reasonable effort. Although the department recognizes that the information requested would help construct a more complete picture of the mortgage lending industry, the department did not intend to unnecessarily burden licensees with reporting requirements. This rulemaking activity clarifies that while the department encourages the collection of all the data specified in the rule, certain items would not be mandatory for the present reporting period.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-865-0022

Residential Mortgage Lending Reports

Each mortgage banker and mortgage broker licensed during the period of time described in section (18) of this rule must file a report concerning the banker's or broker's business and operations in Oregon related to residential mortgage transactions closed during the period described in section (18) of this rule. The report must include, but need not be limited to, the following information:

(1) The total number and dollar amount of first-lien mortgage loans .

(2) The total number and dollar amount of subordinate-lien mortgage loans including, but not limited to, home equity lines of credit.

(3) The total number and dollar amount of mortgage loans insured or guaranteed by a federal agency.

(4) The total number and dollar amount of closed mortgage loans not insured or guaranteed by a federal agency and having a fixed periodic payment of principal and interest throughout the mortgage term.

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(5) The total number and dollar amount of interest-only mortgage loans.

(6) The total number and dollar amount of negative amortization mortgage loans.

(7) The total number and dollar amount of adjustable rate mortgage loans.

(8) The total number and dollar amount of loans with a prepayment penalty in the contract at the time of closing.

(9) The total number and dollar amount of mortgage loans closed for the purchase of an owner-occupied residential dwelling.

(10) The total number and dollar amount of mortgage loans closed for the purpose of refinancing an existing mortgage loan.

(11) The total number and dollar amount of loans that were originated based on all of the following factors:

(a) Income documentation;

(b) Employment documentation, and;

(c) Asset documentation.;

(12) The total number and dollar amount of loans that were originated based on one or two of the following factors:

(a) Income documentation;

(b) Employment documentation; or

(c) Asset documentation.

(13) The total number and dollar amount of loans that were not originated based on any of the following factors:

(a) Income documentation

(b) Employment documentation; or

(c) Asset documentation.

(14) The total number and dollar amount of loans with a loan-to-value ratio of 80% or lower made to an individual having a median credit bureau risk score of 620 or above.

(15) The total number and dollar amount of loans with a loan-to-value ratio of 80% or lower made to an individual having a median credit bureau risk score below 620.

(16) The total number and dollar amount of loans with a loan-to-value ratio of greater than 80% made to an individual having a median credit bureau risk score of 620 or above.

(17) The total number and dollar amount of loans with a loan-to-value ratio of greater than 80% made to an individual having a median credit bureau risk score below 620.

(18)(a) Each mortgage banker and mortgage broker must file a report containing the information listed in sections (1) through (17) of this rule on or before August 30, 2008.

(b) Sections (1) through (17) of this rule apply to loans closed between January 1, 2007, to December 31, 2007.

(19) For purposes of this rule:

(a) "Loan-to-value ratio" means the ratio between the amount of a mortgage loan and the value of the property pledged as security, expressed as a percentage.

(b) "Residential mortgage transaction" has the same meaning as ORS 59.840.

Stat. Auth.: 2008 OL Ch. 38, § 1

Stat. Implemented: 2008 OL Ch. 38, § 1

Hist.: FCS 4-2008(Temp), f. & cert. ef. 5-7-08 thru 10-31-08; Suspended by FCS 6-2008(Temp), f. & cert. ef. 6-26-08 thru 12-1-08

441-865-0024

Residential Mortgage Lending Reports

Each mortgage banker and mortgage broker licensed during the period of time described in section (3) of this rule must file a report concerning the banker's or broker's business and operations in Oregon related to residential mortgage transactions.

(1) A licensee must report the total number and dollar amount of:

(a) First-lien mortgage loans.

(b) Subordinate-lien mortgage loans including, but not limited to, home equity lines of credit.

(c) Mortgage loans having a fixed periodic payment of principal and interest throughout the mortgage term.

(d) Interest-only mortgage loans.

(e) Negative amortization mortgage loans.

(f) Adjustable rate mortgage loans.

(g) Loans with a prepayment penalty in the contract at the time of closing.

(h) Mortgage loans closed for the purchase of a primary owner-occupied residential dwelling.

(i) Mortgage loans closed for the purpose of refinancing an existing mortgage loan.

(2) A licensee may report the total number and dollar amount of:

(a) Mortgage loans insured or guaranteed by a federal agency.

(b) Loans that were originated based on all of the following factors:

(A) Income documentation;

(B) Employment documentation, and;

(C) Asset documentation.

(b) Loans that were originated based on one or two of the following factors:

(A) Income documentation;

(B) Employment documentation; or

(C) Asset documentation.

(c) Loans that were not originated based on any of the following factors:

(A) Income documentation

(B) Employment documentation; or

(C) Asset documentation.

(d) Loans with a combined loan-to-value ratio of 80% or lower made to an individual having a median credit bureau risk score of 620 or above.

(e) Loans with a combined loan-to-value ratio of 80% or lower made to an individual having a median credit bureau risk score below 620.

(f) Loans with a loan-to-value ratio of greater than 80% made to an individual having a median credit bureau risk score of 620 or above.

(g) Loans with a loan-to-value ratio of greater than 80% made to an individual having a median credit bureau risk score below 620.

(3)(a) Each mortgage banker and mortgage broker must file a report addressing sections (1) and (2) of this rule on or before August 30, 2008.

(b) Sections (1) and (2) of this rule apply to loans closed between January 1, 2007, and December 31, 2007.

(4) For purposes of this rule:

(a) "Loan-to-value ratio" means the ratio between the amount of a mortgage loan and the value of the property pledged as security, expressed as a percentage.

(b) "Residential mortgage transaction" has the same meaning as ORS 59.840.

Stat. Auth.: 2008 Or Laws ch. 38, § 1.

Stat. Implemented: 2008 Or Laws ch. 38, § 1.

Hist.: FCS 6-2008(Temp), f. & cert. ef. 6-26-08 thru 12-1-08

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Filing and Public Disclosure of Health Benefit Plan Rates.

Adm. Order No.: ID 8-2008

Filed with Sec. of State: 6-18-2008

Certified to be Effective: 6-18-08

Notice Publication Date: 4-1-2008

Rules Amended: 836-053-0910

Subject: This rulemaking implements 2007 legislation that requires rate filings for certain health benefit plans to be available for public inspection once the filings are submitted to the Director. The requirement applies to health benefit plans for small employers and to portability and individual health benefit plans. The rulemaking provides for public inspection of the filing, states the manner and format for filing the rating information and exemptions from the filing requirement and requires a carrier to include with a rate filing an explanatory statement about the filing. This rulemaking applies to filings made on and after May 11, 2008.

Rules Coordinator: Sue Munson—(503) 947-7272

836-053-0910

Rate Filing

(1) A carrier shall file with the Director:

(a) The appropriate checklists and certification statements, as established in OAR 836-010-0011;

(b) An actuarial demonstration of the basis for the differences in the geographic average rates of the various plans offered in the marketplace. This demonstration shall be certified by a member of the American Academy of Actuaries both at the initial submission and subsequently when the rate relativities between plans are changed.

(2) A carrier shall not offer a subject health benefit plan until the Director has determined that the filed geographic average rate meets the applicable statutory requirements.

(3) An approved geographic average rate shall not be modified by a carrier until the Director has determined that the filed modification meets the applicable statutory requirements.

(4) Rate filings pursuant to requirements specified in OAR 836-010-0011 and 836-010-0021 for any of the following health benefit plans subject to ORS 743.730 to 743.773 must be submitted to the Director in electronic format:

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- (a) Health benefit plans for small employers.
- (b) Portability health benefit plans.
- (c) Individual health benefit plans.
- (5) Forms of acceptable electronic filing format under section (4) of this rule are:

(a) Filings submitted using the National Association of Insurance Commissioner's System for Electronic Rate and Form Filings (SERFF); or

(b) Filings with documentation attached in pdf format that is under 3MB in size. For the purpose of this subsection, each filing requirement, such as an exhibit, an actuarial memorandum or a certificate of compliance, must be in a separate pdf format under 3MB in size. These filings may be submitted via email with documents attached in pdf format, or the filings may be submitted on a compact disc (CD) with documents attached in pdf format. If submitting via email, the combined size of the email plus attached documents being transmitted must be less than four megabytes.

(6) A carrier shall submit with a filing under section (4) of this rule a statement that explains the filing in plain language for the purpose of public information, according to the form established in Exhibit 1 or Exhibit 2 to this rule or in other substantively similar wording.

(7) The following apply to an insurer requesting exemption from disclosure:

(a) The insurer must submit the part or parts of the filing requested to be exempt in a separate pdf format from the portion of the filing for which exemption is not requested.

(b) The insurer must accompany the exemption request by a clear and detailed explanation of the following:

(A) How the part or parts of the filing meet the requirement of a trade secret; and

(B) How public disclosure of the trade secret would harm competition in the Oregon health insurance market, with particular attention to the effects of disclosure on Oregon consumers, along with evidence that demonstrates likely consequences.

(c) The insurer must submit the request with the rate filing.

(8) Contents of rate filings described in section (4) of this rule and statements described in section (6) of this rule will be posted for public inspection on the Oregon Insurance Division website. A carrier that submits a request for exemption may respond to the Director not later than the fifth day after the carrier receives the Director's decision to grant or deny the exemption. A request for exemption in compliance with this section will stay disclosure of the part of a filing to which the request applies, pending the Director's decision on the request. Similarly, a request for a hearing on a decision by the Director will also stay disclosure of the part of a filing to which the request applies.

(9) Violation of any provision of this rule is an unfair trade practice under ORS 746.240.

(10) Sections (4) to (8) of this rule apply to a rate filing made on or after May 11, 2008.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 743.730 - 743.773

Hist.: ID 13-1996(Temp), f. & cert. ef. 9-23-96; ID 2-1997, f. & cert. ef. 3-28-97; ID 5-1998, f. & cert. ef. 3-9-98, Renumbered from 836-053-0185; ID 13-2007(Temp), f. & cert. ef. 12-21-07 thru 5-10-08; Administrative correction 5-20-08; ID 8-2008, f. & cert. ef. 6-18-08

Rule Caption: Rulemaking Governing Annual Audited Insurer Financial Reports; and Correction of Rules Governing Domestic Insurer Proxies.

Adm. Order No.: ID 9-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 836-011-0223, 836-011-0225, 836-011-0227, 836-011-0235

Rules Amended: 836-011-0100, 836-011-0110, 836-011-0120, 836-011-0130, 836-011-0140, 836-011-0150, 836-011-0160, 836-011-0180, 836-011-0190, 836-011-0200, 836-011-0210, 836-011-0220

Rules Repealed: 836-024-0056, 836-024-0061

Subject: This rulemaking amends the Insurance Division's rules governing annual audited financial reports of authorized insurers to incorporate recent changes to the NAIC model regulations, upon which the rules are based. Changes include a requirement that each

insurer designate an audit committee, a prohibition against having an audit performed by an accountant who provides certain nonaudit services and a requirement that large insurers submit an internal control report. This rulemaking also corrects the rules governing domestic insurer proxies by repealing two redundant rules.

Rules Coordinator: Sue Munson—(503) 947-7272

836-011-0100

Authority; Purpose; Scope

(1) OAR 836-011-0100 to 836-011-0230 are adopted by the Director pursuant to ORS 731.488. The purpose of OAR 836-011-0100 to 836-011-0230 is to improve the Director's surveillance of the financial condition of insurers by requiring the following:

(a) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;

(b) Communication of Internal Control Related Matters Noted in an Audit; and

(c) Management's Report of Internal Control over Financial Reporting.

(2) OAR 836-011-0100 to 836-011-0230 apply to every authorized insurer, subject to exemptions in 836-011-0130.

(3) OAR 836-011-0100 to 836-011-0230 do not limit the Director's authority to order, conduct or perform examinations of insurers under the Insurance Code.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0110

Definitions

As used in OAR 836-011-0100 to 836-011-0230:

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in each state in which the accountant or accounting firm is licensed to practice. For a Canadian or British insurer, the term means a Canadian-chartered or British-chartered accountant.

(2) An "affiliate" of, or a person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of an entity that controls a group of insurers may be considered to be the audit committee for one or more of the controlled insurers solely for the purposes of OAR 836-011-0100 to 836-011-0230 at the election of the controlling person. 836-011-0223(6) governs the exercise of this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors constitutes the audit committee.

(4) "Audited financial report" means a report that includes the items specified in OAR 836-011-0140.

(5) "Group of insurers" means those authorized insurers included in the reporting requirements of ORS 732.517 to 732.592, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(6) "Indemnification" means an agreement of indemnity or a release from liability when the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

(7) "Independent board member" has the same meaning given the term in OAR 836-011-0223(4)

(8) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in OAR 836-011-0140(2) and (3), except for 836-011-0140(2)(a), and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in OAR 836-011-0140(2) and (3), except for 836-011-0140(2)(a), and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

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(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in OAR 836-011-0140(2) and (3), except for 836-011-0140(2)(a).

(9) "SEC" means the United States Securities and Exchange Commission.

(10) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(11) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in section (1) of this rule.

(12) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the Audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the Internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0120

Filing and Extensions for Filing of Annual Audited Financial Reports

(1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Director on or before June 1 for the year ended December 31 immediately preceding. The Director may require an insurer to file an audited financial report earlier than June 1 with advance notice of 90 days to the insurer.

(2) Extensions of the June 1 filing date may be granted by the Director for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the Director of good cause for an extension. The request for extension must be submitted in writing not less than 10 days prior to the due date in sufficient detail to permit the Director to make an informed decision with respect to the requested extension.

(3) If an extension is granted in accordance with section (2) of this rule, a similar extension of 30 days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

(4) Every insurer required to file an annual audited financial report pursuant to OAR 836-011-0100 to 836-011-0230 shall designate a group of individuals as constituting its audit committee, as defined in 836-011-0110. The audit committee of an entity that controls an insurer may be designated as the insurer's audit committee for purposes of 836-011-0100 to 836-011-0230 at the election of the controlling person.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0130

Exemptions

(1) The following authorized insurers are exempt from the requirements of OAR 836-011-0100 to 836-011-0230:

(a) An insurer having direct premiums written in this state of less than \$1,000,000 in any calendar year and having fewer than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the same calendar year is exempt from OAR 836-011-0100 to 836-011-0230 for the year unless the Director determines with respect to the insurer that compliance is necessary for the Director to carry out statutory responsibilities. The exemption under this subsection does not apply to any insurer that has assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1,000,000 or more.

(b) A foreign or alien insurer that has filed the audited financial report in another state pursuant to the other State's requirement of audited financial reports, if the Director determines that the other state's requirements are substantially similar to the requirements of OAR 836-011-0100 to 836-011-0230 and if the foreign or alien insurer does both of the following:

(A) Files with the Director a copy of the Audited Financial Report, the Communication of Internal Control Related Matters Noted in an Audit and the Accountant's Letter of Qualifications that are filed with the other state, in accordance with the filing dates specified in OAR 836-011-0120, 836-011-0200, and 836-011-0210. In lieu of the requirements of this paragraph, a Canadian insurer may file accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada.

(B) Files with the Director a copy of any Notification of Adverse Financial Condition Report filed with the other state. The copy must be filed with the Director within the time specified in OAR 836-011-0190.

(c) An insurer to whom the Director has granted an exemption under section (2) of this rule, during the period in which the exemption is effective.

(d) A foreign or alien insurer required to file Management's Report of Internal Control over Financial Reporting in another state is exempt from filing the Report in this state if the other state has substantially similar reporting requirements and the Report is filed with the insurance commissioner of the other state within the time specified.

(2) Upon written application of any insurer, the Director may grant an exemption from compliance with one or more provisions of OAR 836-011-0100 to 836-011-0230 if the Director finds upon review of the application that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Not later than the 10th day after denial of an insurer's written request for an exemption under this section, the insurer may request in writing a hearing on its application for an exemption.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0140

Contents of Annual Audited Financial Report

(1) An annual audited financial report required under OAR 836-011-0120 must report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed or otherwise permitted by the Department of Insurance of the state of domicile.

(2) The annual audited financial report shall include the following:

(a) A report of an independent certified public accountant;

(b) A balance sheet reporting admitted assets, liabilities and capital and surplus;

(c) A statement of operations;

(d) A statement of cash flow;

(e) A statement of changes in capital and surplus; and

(f) Notes to financial statements. The notes shall be those required by the appropriate National Association of Insurance Commissioners (NAIC) Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to ORS 731.574, with a written description of the nature of the differences.

(3) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Director. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0150

Designation of Independent Certified Public Accountant

(1) Each insurer required by OAR 836-011-0120 to file an annual audited financial report, within 60 days after becoming subject to the requirement, must register with the Director in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in 836-011-0120 and 836-011-0150. An insurer not retaining an independent certified public accountant on July 1, 2008 shall register the name and address of its retained independent certified public accountant not less than six months before the date on which the first audited financial report is to be filed.

(2) An insurer shall obtain a letter from the accountant retained by the insurer stating that the accountant is aware of the provisions of the Insurance Code and the rules of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express the opinion of the accountant on the financial statements in terms of their conformity with the statutory accounting practices prescribed or otherwise permitted by that Department, specifying exceptions that the accountant believes appropriate. The insurer shall file a copy of the letter with the Director.

(3) If the accountant who was the certified public accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall so notify the Director not later than the fifth business day after the dismissal or resignation. The insurer shall also do the following:

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(a) Notify the Director in a separate letter, not later than the 10th business day after the date of the notice of dismissal or resignation, whether in the 24 months preceding the engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure that, if not resolved to the satisfaction of the former accountant, would have caused the former accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction, and are those disagreements that occur at the decision making level, between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(b) Request the former accountant, in writing, to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which the accountant does not agree.

(c) Furnish the Director the letter received from the former accountant under subsection (b) of this section together with a response by the insurer to that letter.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0160

Qualifications of Independent Certified Public Accountant

(1) The Director shall not recognize any person as a qualified independent certified public accountant for the purposes of OAR 836-011-0100 to 836-011-0230 if the person:

(a) Is not in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which the person is licensed to practice as a certified public accountant or, if the insurer is a Canadian or British insurer, the person is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or a release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.

(2) Except as otherwise provided in this rule, the Director shall recognize an independent certified public accountant as qualified as long as the certified public accountant conforms to the standards of the certified public accountant profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules and the Code of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.

(3) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. In the event of a delinquency proceeding commenced against the insurer under ORS 734.130, however, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The partner or other person is disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may apply to the Director for relief from the rotation requirement of this section on the basis of unusual circumstances. An insurer must apply for relief at least 30 days before the end of the calendar year. The Director may consider the following factors in determining whether the relief should be granted:

(a) The number of partners, the expertise of the partners or the number of insurance clients in the currently registered firm;

(b) The premium volume of the insurer;

(c) The number of jurisdictions in which the insurer transacts insurance.

(5) An insurer to which relief from the rotation requirements under section (4) of this rule has been granted shall file with its annual statement filing the Director's approval for relief with the states that it is licensed in or doing business in, and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(6) The Director shall not recognize an individual as an independent certified public accountant, or accept an annual audited financial report required by OAR 836-011-0100 to 836-011-0230 that is prepared in whole or part by an individual, if the individual:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under OAR 836-011-0100 to 836-011-0230; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in any report filed under OAR 836-011-0100 to 836-011-0230.

(7) The Director may hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing the accountant's opinion on the financial statements in the annual audited financial report made pursuant to OAR 836-011-0100 to 836-011-0230 and require the insurer to replace the accountant with another accountant who is qualified with respect to the insurer as provided in 836-011-0100 to 836-011-0230.

(8) The Director may not recognize an accountant as a qualified independent certified public accountant or accept an annual audited financial report prepared in whole or in part by the accountant if the accountant provides to an insurer, contemporaneously with the audit, the following non-audit services:

(a) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

(b) Financial information systems design and implementation;

(c) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(d) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

(A) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(B) The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and

(C) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(e) Internal audit outsourcing services;

(f) Management functions or human resources;

(g) Broker or dealer, investment adviser or investment banking services;

(h) Legal services or expert services unrelated to the audit; or

(i) Any other services that the Director has determined by rule to be impermissible.

(9) In general, the principles of independence with respect to services provided by a qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit the accountant's own work, and cannot serve in an advocacy role for the insurer.

(10) An insurer having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from section (8) of this rule. The insurer shall file with the Director a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Director finds, upon review of this statement, that compliance with section (8) of this rule would constitute a financial or organizational hardship upon the insurer, the Director may grant an exemption.

(11) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in section (8) of this rule and that do not conflict with section (9) of this rule only if the activity is approved in advance by the audit committee in accordance with section (12) of this rule.

(12) All auditing services and non-audit services provided to an insurer by a qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

(a) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(b) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(13) The audit committee may delegate to one or more designated members of the Audit committee the authority to grant the preapprovals

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required by section (12) of this rule. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(14)(a) The Director may not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer or any person serving in an equivalent position for that insurer was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section applies only to partners and senior managers involved in the audit. An insurer may apply to the Director for relief from the requirement of this subsection on the basis of unusual circumstances.

(b) The insurer shall file with its annual statement filing the approval for relief from subsection (a) of this section with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

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

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 2-2002(Temp), f. & cert. ef. 1-15-01 thru 7-5-02; ID 17-2002, f. & cert. ef. 7-11-02; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0180

Scope of Audit and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to OAR 836-011-0140 shall be audited by an independent certified public accountant. The audit of the insurer's financial statements must be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to 836-011-0227, the independent certified public accountant shall consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall also be given to other procedures illustrated in the **Financial Condition Examiner's Handbook** promulgated by the National Association of Insurance Commissioners as the certified public accountant determines to be necessary.

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

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0190

Notification of Adverse Financial Condition

(1) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report in writing to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Director as of the date of the balance sheet currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Oregon Insurance Code as of that date. The insurer shall require the independent certified public accountant to submit the report not later than the fifth business day after the independent certified public accountant makes such a determination. An insurer that has received a report under this section shall forward a copy of the report to the Director not later than the fifth business day after receiving the report and shall provide the independent certified public accountant with evidence that the report was furnished to the Director. If the independent certified public accountant does not receive the evidence within the required period, the independent certified public accountant shall furnish to the Director a copy of its report not later than the fifth business day after the end of the period within which the insurer was required to submit the report.

(2) An independent certified public accountant shall not be liable to any person for any statement made in connection with the requirements of section (1) of this rule if the statement is made in good faith and in compliance with section (1) of this rule.

(3) If the accountant, after the date of the audited financial report filed pursuant to OAR 836-011-0100 to 836-011-0230, becomes aware of facts that might have affected the report, the Director notes the obligation of the accountant to act as prescribed in **Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants (AICPA)**.

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

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0200

Communication of Internal Control Related Matters Noted in an Audit

(1) In addition to the annual audited financial report, each insurer shall furnish the Director with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. The communication must be prepared by the accountant not later than the 60th day after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, *Communication of Internal Control Related Matters Noted in an Audit*, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report required by OAR 836-011-0120(1)) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication must so state.

(2) The insurer shall submit with the report required under section (1) of this rule a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's report.

(3) The insurer shall maintain information about significant deficiencies communicated by the independent certified public accountant. The information must be made available to the examiner conducting a financial condition examination for review and kept in such a manner as to remain confidential.

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

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0210

Accountant's Letter of Qualifications

(1) An accountant shall furnish the insurer, in connection with and for inclusion in the filing of the annual audited financial report, a letter stating:

(a) That the accountant is independent with respect to the insurer and conforms to the standards of the accounting profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants (AICPA) and the Rules of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.

(b) The background and experience in general, and the experience in audits of insurers, of the staff assigned to the engagement and whether each is an independent certified public accountant.

(c) That the accountant understands that the annual audited financial report and the opinion of the accountant thereon must be filed in compliance with OAR 836-011-0100 to 836-011-0230 and that the Director will rely on the information contained in the report and opinion in the monitoring and regulation of the financial position of insurers.

(d) That the accountant consents to the requirements of OAR 836-011-220 and that the accountant agrees to make the workpapers described in 836-011-0220 available for review by the Director, or the Director's designee or appointed agent.

(e) A representation that the accountant is currently licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(f) A representation that the accountant is in compliance with OAR 836-011-0160.

(2) This rule does not prohibit an independent certified public accountant from using such staff as the accountant determines appropriate when use of the staff is consistent with the standards prescribed by generally accepted auditing standards.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0220

Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers

(1) For the purpose of this rule, workpapers are the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Accordingly, workpapers may include audit planning documentation, work

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programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's audit of the financial statements of an insurer and which support the accountant's opinion.

(2) An insurer that is required to file an audited financial report pursuant to OAR 836-011-0100 to 836-011-0230 shall require the accountant to make available for review by Department of Consumer and Business Service examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Department or at any other reasonable place designated by the Director. The insurer shall require that the accountant retain the audit workpapers and communications until the Department has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

(3) In the conduct of a periodic review by the Department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Department. Any such review by the Department examiners is an investigation and all working papers and communications obtained during the course of such an investigation must be given the same confidentiality as other examination workpapers generated by the Department.

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

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02; ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0223

Requirements for Audit Committees

(1) This rule does not apply to an authorized foreign or alien insurer or to an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(2) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of an accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to OAR 836-011-0100 to 836-011-0230. Each accountant shall report directly to the audit committee.

(3) Each member of the audit committee must be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to section (6) of this rule.

(4) To be considered independent for purposes of this rule, a member of the audit committee may not accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof, other than in the member's capacity as a member of the audit committee, the board of directors or any other board committee. However, if a law requires board participation by an otherwise non-independent member, that law prevails and the member may participate in the audit committee and be designated as independent for audit committee purposes, unless the member is an officer or employee of the insurer or one of its affiliates.

(5) If a member of the audit committee ceases to be independent for a reason outside the member's reasonable control, that person, with notice by the responsible entity to the Director, may remain an audit committee member of the responsible entity until the earlier of the date of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(6) To exercise the election of the controlling person to designate the audit committee for purposes of OAR 836-011-0100 to 836-011-0230, the ultimate controlling person shall provide written notice to the Director. The notice must be provided in a timely manner prior to the issuance of the statutory audit report and must include a description of the basis for the election. The insurer may change the election by notifying the Director. The notice to the Director must include a description of the basis for the change. The election remains in effect for perpetuity, until rescinded.

(7) The audit committee shall require the accountant that performs for an insurer any audit required by OAR 836-011-0100 to 836-011-0230 to timely report to the Audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:

(a) All significant accounting policies and material permitted practices;

(b) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(c) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(8) If an insurer is a member of an insurance holding company system, the reports required by section (7) of this rule may be provided to the audit committee on an aggregate basis for insurers in the holding company system, but only if any substantial differences among insurers in the system are identified to the Audit committee.

(9) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums

\$0 - \$300,000,000 — No minimum requirements. See also Note A and B.

Over \$300,000,000 - \$500,000,000 — Majority (50% or more) of members shall be independent. See also Note A and B.

Over \$500,000,000 — Supermajority of members (75% or more) shall be independent. See also Note A.

(10) (Note A) The Director is authorized by state law to require an entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer determined to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer.

(11) (Note B) All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent Audit committee members.

(12) (Note C) Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(13) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500,000,000 may apply to the Director for a waiver from the requirements of this rule on the basis of hardship. The insurer shall file, with its annual statement filing, the approval for relief from this rule with the states that it is licensed or authorized in or doing business in and with the NAIC. If a nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0225

Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

(1) A director or officer of an insurer may not directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under OAR 836-011-0100 to 836-011-0230; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under OAR 836-011-0100 to 836-011-0230.

(2) An officer or director of an insurer, or any other person acting under the direction thereof, may not directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to OAR 836-011-0100 to 836-011-0230 if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of section (2) of this rule, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances, due to material violations of statutory accounting principles prescribed by the Director, generally accepted auditing standards, or other professional or regulatory standards;

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

836-011-0227

Management's Report of Internal Control over Financial Reporting

(1) Each insurer required to file an audited financial report pursuant to OAR 836-011-0100 to 836-011-0230 that has annual direct written and assumed premiums of \$500,000,000 or more, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, shall prepare a report of the insurer's or group of insurers' internal control over financial reporting. The insurer shall file the report with the

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Hist.: ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

Director, along with the Communication of Internal Control Related Matters Noted in an Audit, as described in OAR 836-011-0200. The Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in section (1) of this rule, the Director may require an insurer to file a Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event or meets any one or more of the standards of an insurer determined to be in hazardous financial condition as defined in ORS 731.385.

(3) An insurer or a group of insurers described in this section may file its or its parent's Section 404 Report and an addendum in satisfaction of this rule, but only if the internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in OAR 836-011-0140(2) and (3), except for 836-011-0140(2)(a)) were included in the scope of the Section 404 Report. This section applies to an insurer or a group of insurers that is:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404 but is a SOX Compliant Entity; or

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity.

(4) An addendum provided by an insurer or group of insurers under section (3) of this rule must be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in OAR 836-011-0140(2) and (3), except for 836-011-0140(2)(a)) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may file either (i) a report under this rule, or (ii) the Section 404 Report and a report under this rule for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(5) A Management's Report of Internal Control over Financial Reporting must include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer (or equivalent position and title).

(6) For a Management's Report of Internal Control over Financial Reporting under section (5) of this rule, management may not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting.

(7) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in section (5) of this rule, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities. In addition:

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

(b) Management's Report on Internal Control over Financial Reporting, required by section (1) of this rule, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Department.

Stat. Auth.: ORS 731.244 & 731.488
Stats. Implemented: ORS 731.488

836-011-0235

Effective Dates

(1) The requirements of OAR 836-011-0160(4) as amended effective July 1, 2008 apply to audits of the year beginning January 1, 2010 and thereafter.

(2) The requirements of OAR 836-011-0223 first apply beginning January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium has one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(3) The requirements of OAR 836-011-0100 to 836-011-0230 as amended effective July 1, 2008, except for 836-011-0223, are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

Stat. Auth.: ORS 731.244 & 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 9-2008, f. 6-30-08, cert. ef. 7-1-08

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Rule Caption: General Criteria for Director's Orders Under Insurance Code in Event of Governor's Emergency Declaration.

Adm. Order No.: ID 10-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 6-30-08

Notice Publication Date: 6-1-2008

Rules Adopted: 836-050-0300, 836-050-0305

Subject: This rulemaking implements legislation enacted in the 2008 special session, which authorizes the Director of the Department of Consumer and Business Services, in the event the Governor issues a declaration of emergency, to issue an order addressing matters related to insurance policies issued in the state.

Rules Coordinator: Sue Munson—(503) 947-7272

836-050-0300

Purpose, Authority, Application

(1) OAR 836-050-0300 and 836-050-0305 are adopted to implement section 2, chapter 22, Oregon Laws 2008 (Enrolled HB 3605), which requires the Director to adopt rules establishing general criteria for orders that the Director is authorized to issue when the Governor declares a state of emergency under ORS 401.055.

(2) OAR 836-050-0300 and 836-050-0305 apply to a state of emergency declared by the Governor when the conditions leading to the declaration substantially interfere with the public's ability to carry on its normal business affairs.

Stat. Auth.: ORS 731.244 & 2008 OL Ch. 22, Sec. 2

Stats. Implemented: 2008 OL Ch. 22, Sec. 2

Hist.: ID 10-2008, f. & cert. ef. 6-30-08

836-050-0305

Criteria for orders

(1) An order issued pursuant to section 2, chapter 22, Oregon Laws 2008 (Enrolled HB 3605):

(a) Must include the items required in that section to be specified by line of insurance; and

(b) Must make a statement of general findings that refers to the specific declaration of a state of emergency upon which the order is based, describes the need for the order and declares the harm to be prevented or mitigated by the order.

(2) If the Director determines that an order under this rule must address reporting requirements for claims, the Director shall consider to what extent the circumstances of the declared state of emergency prevent policyholders from using normal methods of reporting claims and shall determine what methods of reporting remain available to consumers in the affected areas. The Director shall prepare the order accordingly. The Director may direct insurers to accept alternative methods of reporting as may be available to policyholders and may extend the reporting period as

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appropriate, subject to limitations of section 2, chapter 22, Oregon Laws 2008.

(3) If the Director determines that an order under this rule must address grace periods for payment of insurance premiums and performance of other duties by insureds, the Director shall consider the extent to which the circumstances of the declared state of emergency prevent the payment and performance and shall prepare the order accordingly. The Director may direct insurers to extend the grace periods as appropriate, subject to limitations of section 2, chapter 22, Oregon Laws 2008.

(4) If the Director determines that an order under this rule must temporarily postpone policy cancellations and nonrenewals, the Director shall consider the extent to which the declared state of emergency prevents communication of notices of cancellation or nonrenewal from policyholders to their insurers and the extent to which communication is prevented from insurers to their policyholders. The Director shall prepare the order accordingly. The Director may direct insurers to accept alternative methods of communication of the notices and may postpone cancellations and nonrenewals as appropriate, subject to limitations of section 2, chapter 22, Oregon Laws 2008. An order including a temporary postponement under this section must include the following:

(a) The period for which an extension of policy coverage will apply and the method for determining premium for the extended term of coverage, and whether notices of cancellation or nonrenewals must be withdrawn and reissued;

(b) When and how an insurer that was unable to cancel or nonrenew a policy owing to an order may cancel or nonrenew the policy following the period to which the order applies, and the date on which the cancellation or nonrenewal may become effective; and

(c) That an insurer may not cancel or nonrenew a policy solely because of a claim resulting from the circumstances on which the emergency order is based, except that the Director may allow cancellation or nonrenewal of a policy under specific fact circumstances, including but not limited to fraud or material misrepresentation affecting the policy or in the presentation of a claim under the policy, upon application by an insurer.

(5) An order of the Director under this rule must establish at least the following matters, as appropriate:

(a) Whether the order applies to authorized insurers only or to other insurers as well;

(b) The classes and categories of insurance policies to which the order applies, whether by specific inclusion or exclusion;

(c) The categories of insureds and insured property to which the order applies.

(d) Whether an insurer who receives a claim from an insured owing premium may offset the premium due from any claim payment made under the policy;

(e) Whether a free look period in a variable life insurance policy or variable annuity contract is extended by the order; and

(f) Procedures to be followed by premium finance companies with respect to cancellation of policies, including notice, proof of notice and treatment of refunds.

(6) An extension of time by the Director under this rule does not relieve a policyholder who has a claim resulting from the state of emergency from compliance with the policyholder's obligations to provide information and cooperate in the claim adjustment process relative to the claim.

Stat. Auth.: ORS 731.244 & 2008 OL Ch. 22, Sec. 2

Stats. Implemented: 2008 OL Ch. 22, Sec. 2

Hist.: ID 10-2008, f. & cert. ef. 6-30-08

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

Rule Caption: Updates and amends definition of creditable coverage. Also creates definition of resident and substantially equivalent benefits

Adm. Order No.: OMIPB 5-2008(Temp)

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08 thru 12-27-08

Notice Publication Date:

Rules Amended: 443-002-0010

Subject: Updates and amends definition of creditable coverage to be in accordance with federal law. Also creates definition of "resident" and "substantially equivalent benefits or coverage" as referenced in statute.

Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0010

Definitions

(1) "Administering Insurer" means the insurance company or third party administrator selected pursuant to ORS 735.620 to provide administrative services to operate OMIP on behalf of the OMIP Board.

(2) "Appeal" means a request to have an adverse grievance decision reviewed.

(3) "Applicant" means a person who is applying for OMIP coverage.

(4) "Benefit Enrollment Year" means a year beginning on the enrollee's effective date of OMIP coverage.

(5) "Calendar Year" means January 1st through December 31st each year.

(6) "Carrier" means an insurance company, a health maintenance organization or health care service contractor that has a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance.

(7) "Certificate of Coverage (COC)" means a certificate that is provided by an insurance carrier as proof of prior insurance coverage.

(8) "Children" means the applicant's natural or legally adopted child, stepchildren living in the home or non-resident stepchildren if there is a qualified medical child support order that requires the applicant to provide health insurance.

(9) "Claim" means a request for payment under the terms of an insurance Contract.

(10) "Creditable Coverage" means prior health care coverage without a break in coverage greater than 63 days, as defined in 42 U.S.C. 300gg as amended and in effect on July 1, 1997.

(11) "Dependent" means the contract holder's enrolled legal spouse, domestic partner, and unmarried children less than 23 years of age.

(12) "Eligibility" means meeting the Oregon residency and medical, portability, or federal Health Coverage Tax Credit (HCTC) requirements to qualify for the OMIP program as established in OAR 443-002-0060.

(13) "Enrollee" means an individual who is enrolled in one of the OMIP medical or portability benefit plans.

(14) "External Review" is a review performed by a state contracted independent review organization when an enrollee has exhausted all internal grievance and appeal procedures and wants the opinion of a medical professional who is separate from the patient's health insurance company. External review applies only to disputes about medical necessity, experimental or investigational treatment, or need for continuity of care.

(15) "Grievance" means a written complaint submitted to OMIP's administering insurer by or on behalf of an enrollee regarding:

(a) Availability, delivery or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) Claims payment, handling or reimbursement for health care services; or

(c) Matters pertaining to the contractual relationship between an enrollee and OMIP.

(16) "Health Coverage Tax Credit (HCTC)" means enrollees who are eligible for OMIP coverage because they qualify and are receiving a federal subsidy through the federal Health Coverage Tax Credit.

(17) "Medicaid" means federal medical assistance provided under 42 U.S.C. section 396a administered by the Oregon Department of Human Services.

(18) "OMIP" means the Oregon Medical Insurance Pool.

(19) "Pre-existing Condition" means a condition for which professional medical advice, diagnosis, care, or treatment was recommended or received in the six months before coverage began. For purposes of the six month limitation period, the term pregnancy shall include: pre-and postnatal care, miscarriage, abortion, delivery (vaginal or surgical), and complication of pregnancy. Complication of pregnancy includes but is not limited to: intra-abdominal surgical procedures; placenta abruptio and placenta previa; acute exacerbations or heart conditions and or diabetes; toxemias.

(20) "Resident" means a person who is legally domiciled and maintains a principal place of residence in Oregon. Once a person is enrolled in OMIP coverage, he/she must also reside at this principal place of residence at least 180 days each benefit enrollment year. If you no longer meet OMIP residence requirements, it is important that you contact OMIP immediately.

(21) "Substantially Equivalent Health Benefits or Coverage" means health insurance coverage that reimburses for medical and hospital expenses without regards to a specific medical condition or disease and has comparable, similar benefits and payout amounts, to OMIP's health benefit plan.

Stat. Auth.: ORS 735.610(6)

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 1-2008, f. & cert. ef. 1-2-08; OMIPB 5-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

ADMINISTRATIVE RULES

Rule Caption: Relating to OMIP portability eligibility

Adm. Order No.: OMIPB 6-2008(Temp)

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08 thru 12-27-08

Notice Publication Date:

Rules Amended: 443-002-0060

Subject: This rulemaking amends the rules for OMIP portability eligibility to accommodate portability eligibility requirements contained in federal HIPAA law (42 U.S.C. § 300gg-41).

Rules Coordinator: Linnea Saris — (503) 378-5672

443-002-0060

Eligibility

MEDICAL

(1) Individuals applying for OMIP medical coverage must be a resident of the State of Oregon and meet one of the following eligibility requirements:

(a) Applicant was denied comprehensive individual health insurance coverage within six months from the mailing date of the OMIP application; or

(b) Applicant has been diagnosed or treated within the last five years for one or more medical conditions listed on the most current OMIP application; or

(c) Applicant is now a resident of Oregon and has transferred from another state's high-risk pool; or

(d) Applicant was offered individual health insurance that contained a waiver which excluded coverage for a specific medical condition; or

(e) Applicant was offered individual health insurance but was limited by the choice of plans the carrier was willing to offer due to a specific medical condition; or

(f) Applicant is eligible for the health coverage tax credit (HCTC) under Section 35 of the Internal Revenue Code effective for taxable years beginning after December 31, 2001.

PORTABILITY

(2) Individuals applying for OMIP portability coverage must be a resident of the state of Oregon; apply to OMIP not later than 63 days after the termination date of their prior group coverage; and meet one of the following STATE or FEDERAL eligibility requirements:

(a) STATE. Had at least 180 days of continuous coverage in one or more Oregon group health insurance plans; and

(i) Applicant has exhausted COBRA benefits or state continuation coverage and does not have any portability options available in Oregon through the employer's insurance group carrier; or

(ii) Applicant was offered portability coverage but the insurance carrier no longer services the area the applicant resides; or

(iii) Applicant did not have any COBRA, state continuation or portability options available; or

(iv) Applicant is eligible for portability coverage but no longer lives in the prior insurance carrier's service area.

(b) FEDERAL. Had a minimum of 18 months of continuous health insurance coverage with the most recent coverage in a group health plan, governmental plan, or church plan. If the individual had been offered COBRA or State Continuation, and elected such coverage, the individual must exhaust that coverage.

Stat. Auth.: ORS 735.610(6), 735.615 & 735.616

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 1-2005(Temp), f. & cert. ef. 8-26-05 thru 2-20-06; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 1-2008, f. & cert. ef. 1-2-08; OMIPB 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

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

Rule Caption: Adopt current Attorney General's Model Rules, and corrections of Oregon Revised Statutes (ORS) references.

Adm. Order No.: OSHA 8-2008

Filed with Sec. of State: 7-14-2008

Certified to be Effective: 7-14-08

Notice Publication Date: 6-1-2008

Rules Amended: 437-001-0001, 437-001-0005, 437-001-0700, 437-001-0706

Subject: This rulemaking amends OAR 47-001-0001, Model Rules of Procedure, by adopting the most recent version, in effect January 1, 2008, of the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Admin-

istrative Procedures Act, which is the model and guide for agency rulemaking.

OAR 437-001-005 Authority and Applicability of Rules, 437-001-0700 Recordkeeping and Reporting, and 437-001-0706 Recordkeeping for Health Care Assaults, are amended to update Oregon Revised Statutes (ORS) references. OAR 437-001-0706(4) is also amended to include an additional reference to the Recordkeeping and Reporting rule 437-001-0700.

Please visit our website www.orosha.org

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

Rules Coordinator: Sue C. Joye — (503) 947-7449

437-001-0001

Model Rules of Procedure

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0100, in effect on January 1, 2008, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act, are adopted as the rules of procedure for rulemaking actions of the Oregon Occupational Safety and Health Division.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 3-1991, f. & cert. ef. 2-25-91; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 2-1994, f. & cert. ef. 5-19-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-2000, f. & cert. ef. 12-12-00; OSHA 2-2002, f. & cert. ef. 3-12-02; OSHA 6-2004, f. & cert. ef. 12-30-04; OSHA 1-2006, f. & cert. ef. 2-14-06; OSHA 8-2008, f. & cert. ef. 7-14-08

437-001-0005

Authority and Applicability of Rules

(1) These rules are promulgated under the Director's authority contained in ORS 654.025(2) and 656.726(4).

(2) Adoption Procedures: These rules for the Administration of the Oregon Safe Employment Act (OAR 437, division 1) are adopted in accordance with ORS Chapter 183 and the Director's Rules of Practice and Procedure Applicable to Rule Making Functions.

(3) History: Prior "Rules for the Administration of the Oregon Safe Employment Act" (OAR 436, division 46, rules 436-046-0005 through 436-046-0750) were first adopted by WCB Admin. Order 19-1974; filed 6-5-74; effective 7-1-74. Amendments were made by:

WCB Admin. Order 33-1974, f. 9-5-74, ef. 9-26-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 7-1979, f. 8-20-79, ef. 9-1-79.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

WCD Admin. Order, Safety 12-1982, f. 6-28-82, ef. 8-1-82.

WCD Admin. Order, Safety 3-1983, f. 1-31-83, ef. 2-1-83.

WCD Admin. Order, Safety 9-1983, f. 11-15-83, ef. 11-15-83.

WCD Admin. Order, Safety 2-1984, f. 3-2-84, ef. 3-15-84.

WCD Admin. Order, Safety 12-1984, f. 9-20-84, ef. 11-1-84.

WCD Admin. Order, Safety 9-1986, f. 10-7-86, ef. 12-1-86.

APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.

APD Admin. Order 5-1988, f. 5-16-88, ef. 5-16-88.

OAR 436, Division 46, Rules for the Administration of the Oregon Safe Employment Act, was redesignated as OAR 437, Division 1, by APD Admin. Order 7-1988, filed 6/17/88. Its effective date remains 7/1/74.

Note: See Historical Notes on Page 1 for more complete list of amendments.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 33-1974, f. 9-5-74, ef. 9-26-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 12-1982, f. 6-28-82, ef. 8-1-82; WCD 3-1983, f. 1-31-83, ef. 2-1-83; WCD 9-1983, f. 11-15-83, ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 5-1988, f. 5-16-88, ef. 5-16-88; APD 7-1988, f. 6-17-88, cert. ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, f. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 8-2008, f. & cert. ef. 7-14-08

437-001-0700

Recordkeeping and Reporting

(1) Purpose. This rule requires employers to record and report work-related fatalities, injuries and illnesses.

NOTE: Recording or reporting a work-related injury, illness, or fatality does not assign fault to anybody, does not prove the violation of an OSHA rule, nor establish the employee's eligibility for workers' compensation or other benefits.

(2) Scope. This standard covers all employers covered by the Oregon Safe Employment Act. However, most employers do not have to keep OR-OSHA injury and illness records unless the Director informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OR-OSHA injury and illness records.

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(3) Partial Exemptions.

(a)(A) If your company never had more than ten (10) employees during the last calendar year, you do not need to keep OR-OSHA injury and illness records unless the Director informs you in writing that you must keep records. However, all employers covered by the Oregon Safe Employment Act must report to OR-OSHA any workplace fatality, the hospitalization of three or more employees, or overnight hospitalizations. (See (21) below)

(B) The partial exemption for size is based on the number of employees in the entire company.

(b) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OR-OSHA injury and illness records unless your business is in a specific low hazard retail, service, finance, insurance or real estate industry in Table 1. [Table not included. See ED. NOTE.] If so, you do not need to keep OR-OSHA injury and illness records unless the government asks you to keep the records under 437-001-0700(23).

(c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep OR-OSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under 437-001-0700(3)(a). If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(4) Alternate or Duplicate Records. If you create records to comply with another government agency's injury and illness recordkeeping requirements, those records meet OR-OSHA's recordkeeping requirements if OR-OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this standard requires you to record. Contact your nearest OR-OSHA office for help in determining if your records meet OR-OSHA's requirements. Table 1 — Partially Exempt Industries [Table not included. See ED. NOTE.]

(5)(a) Recording Criteria and Forms. This describes the work-related injuries and illnesses that an employer must enter on the OR-OSHA records and explains the OR-OSHA forms that employers must use to record work-related fatalities, injuries, and illnesses.

(b) Each employer required to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(A) Is work-related; and

(B) Is a new case; and

(C) Meets one or more of the general recording criteria of OAR 437-001-0700(8) or the application to specific cases of OAR 437-001-0700(9) through (13).

Table 2 — Related rules. [Table not included. See ED. NOTE.]

Graphic [Graphic not included. See ED. NOTE.]

(6) Work-Related. An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. You presume work-relatedness for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Table 3 specifically applies. [Table not included. See ED. NOTE.]

(a) If you are notified that a former employee has had a work related injury or illness, record the date of the incident on the appropriate OSHA 300 log for the date of the injury. If the date is not known use the last day of employment.

NOTE: OR-OSHA defines the work environment as the establishment and other locations where one or more employees work or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of their work. Injuries occurring during travel are work-related if the employee was engaged in work activities in the interest of the employer and it is not one of the exceptions in Table 4. [Table not included. See ED. NOTE.] If it is not obvious where the precipitating event occurred you must evaluate the employee's work duties and environment to decide whether events or exposures in the work environment either caused or contributed to the condition or significantly aggravated a pre-existing condition.

(b) A pre-existing injury or illness is significantly aggravated when an event or exposure in the work environment results in any of the following:

(A) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the occupational event or exposure.

(B) Loss of consciousness, provided that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

(C) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

(D) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure. Table 3 & Table 4 [Tables not included. See ED. NOTE.]

(c) Work at home. Injuries and illnesses that occur while an employee works at home, including work in a home office, is work-related if the

injury or illness relates directly to the work rather than to the general home environment or setting.

(7) New Cases. An injury or illness is a "new case" if:

(a) The employee has no previous recorded injury or illness of the same type that affects the same part of the body, or

(b)(A) The employee previously had a recorded injury or illness of the same type that affected the same part of the body but recovered completely (all signs and symptoms disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

(B) For occupational illnesses where the signs or symptoms may recur or continue in the absence of a workplace exposure, record the case only once. Examples include occupational cancer, asbestosis, byssinosis and silicosis.

NOTE: You are not required to seek the advice of a physician or other licensed health care professional. If you do seek such advice, you must follow their recommendation about whether the case is a new case or a recurrence.

(8) General Recording Criteria. An injury or illness meets the general recording criteria, and is recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must record a case if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

NOTE: OR-OSHA believes that most significant injuries and illnesses will result in one of the events listed below. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

Table 5 [Table not included. See ED. NOTE.]

(a) You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to OR-OSHA within 8 hours.

(b) When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(A) Begin counting days away on the day after the injury occurred or the illness began.

(B) End the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work. This applies regardless of whether the employee returns earlier or later than recommended. If there is no recommendation from the physician or licensed health care professional, enter the actual number of days the employee is off work.

(C) You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Include weekend days, holidays, vacation days or other days off in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(D) You may stop tracking of the number of calendar days away from work once the total reaches 180 days away from work and/or days of job transfer or restriction. Entering 180 in the total days away column is adequate.

(E) If the employee leaves your company for a reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(F) You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log that you prepare for the year in which the incident occurred. If the time off extends into a new year, estimate the number of days for that year and add that amount to the days from the year of occurrence. Do not split the days between years and enter amounts on the logs for two different years. Use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the 180-day cap.

(c) When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space

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for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted workdays column.

(A) Restricted work occurs when, as the result of a work-related injury or illness:

(i) You keep the employee from performing one or more of the routine functions of their job, or from working the full day that they would otherwise work; or

(ii) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of their job, or not work the full workday that they would otherwise work.

NOTE: For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.

(iii) A recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job.

(iv) A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(v) Record job transfer and restricted work cases in the same box on the OSHA 300 Log.

(vi) You count days of job transfer or restriction in the same way you count days away from work. The only difference is that, if you permanently assign the injured or ill employee to a job modified or permanently changed to eliminate the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is permanent. You must count at least 1-day of restricted work or job transfer for such cases.

(d) If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the employee received medical treatment but remained at work without transfer or restriction and the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for other recordable cases.

NOTE: You must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(A) "Medical treatment" is the management and care of a patient to combat disease or disorder. For this rule, medical treatment does not include:

(i) Visits to a physician or other licensed health care professional solely for observation or counseling;

(ii) The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(iii) "First aid" as in (B) below.

(B) First aid is: Table 6 [Table not included. See ED. NOTE.]

(e) You must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time they remain unconscious.

(f) Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of occurrence.

(9) Needlestick and Sharps Injury Recording Criteria.

(a) When an injury is diagnosed later as an infectious bloodborne disease, you must update the classification on the 300 log to reflect the new status or classification.

(b) You must record all work-related needlestick injuries and cuts from sharp objects contaminated with another person's blood or other potentially infectious material (as defined by OAR 437-002-1910.1030). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, do not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in 437-001-0700(14)(a) through (14)(i)).

NOTE: If you have an exposure incident that is not a needlestick, you must still record it if it results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or diagnosis of a significant injury or illness, such as HIV, hepatitis B, or hepatitis C.

(10) Medical Removal Recording Criteria. If another OR-OSHA standard requires the medical removal of an employee, you must record the case on the OSHA 300 Log.

(a) You must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how you decide to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, you must enter the case on the OSHA 300 Log by checking the "poisoning" column.

(b) If the case involves voluntary medical removal before reaching the medical removal levels required by an OR-OSHA standard, do not record the case on the OSHA 300 Log.

(11) Occupational Hearing Loss Recording Criteria.

(a) Hearing loss must be recorded on the OSHA 300 Log by checking the hearing loss column when:

(A) An annual audiogram reveals a Standard Threshold Shift (STS) in either or both ears; and

(B) The hearing level in the same ear is 25 dB above audiometric zero.

NOTE: For the ease of the reader the definitions for STS and audiometric zero are provided here. Standard Threshold Shift (STS) — A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear. Audiometric Zero — The lowest sound pressure level that the average, young adult with normal hearing can hear.

(b) In determining whether an STS has occurred, you may correct for the age of the employee. Use the appropriate table in Appendix A to determine the age adjustment. If the STS is 10 dB or more after the age correction, it still meets the criteria for recordability.

(c) If you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss case within 7 calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the noise standard (OAR 437-002-1910.95) indicates that an STS is not persistent, you may erase, delete, or line-out the recorded entry.

(d) If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, the case is not work-related. Do not record it on the OSHA 300 Log.

(12) Tuberculosis Reporting Criteria. If any of your employees has an occupational exposure to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, you must record the case on the OSHA 300 Log by checking the "respiratory condition" column.

(a) Do not record a pre-employment positive skin test because the exposure was not in your workplace.

(b) Line out or erase a recorded case if you prove that:

(A) the worker lives in a household with a person diagnosed with active TB;

(B) the Public Health Department identifies the worker as a contact of an individual with a case of active TB unrelated to the workplace; or

(C) a medical investigation shows that the employee's infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

(13) Removed.

(14) Forms.

(a) You must use OSHA 300, 300-A, and DCBS Form 801 or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the DCBS Form 801 or equivalent is the Worker's and Employer's Report of Occupational Injury or Disease.

(A) Even if you are exempt from recordkeeping, you must have at each establishment, a copy of DCBS Form 801 or equivalent for each occupational injury or illness that may result in a compensable claim.

(B) You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

(C) You must complete a DCBS Form 801 or equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(D) You must enter each recordable injury or illness on the OSHA 300 Log and DCBS Form 801 or equivalent within 7 calendar days of receiving information that a recordable injury or illness has occurred.

(E) An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the DCBS Form 801, or supplement an insurance form by adding any additional information required by OSHA.

(F) Use a computer to keep your records if it can produce equivalent forms when needed.

(G) If you have a "privacy concern case," do not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative has access to the OSHA 300 Log. You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(H) The following injuries or illnesses are privacy concern cases:

(i) An injury or illness to an intimate body part or the reproductive system;

(ii) An injury or illness resulting from a sexual assault;

(iii) Mental illnesses;

(iv) HIV infection, hepatitis, or tuberculosis;

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- (v) Needlestick injuries and cuts from sharp objects contaminated with another person's blood or other potentially infectious material; and
- (vi) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.

NOTE: This is a complete list of all injuries and illnesses that are privacy concern cases.

(I) If you reasonably believe that information describing the privacy concern case may be personally identifiable even though the employee's name is omitted, use discretion in describing the injury or illness on both the OSHA 300 and DCBS 801 Forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, describe a sexual assault case as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

(J) If you voluntarily disclose the forms to persons other than government representatives, employees, former employees or authorized representatives, you must remove or hide the employees' names and other personally identifying information, except for the following cases:

- (i) To an auditor or consultant hired by the employer to evaluate the safety and health program;
- (ii) To the extent necessary for processing a claim for workers' compensation or other insurance benefits; or
- (iii) To a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR.164.512.

(b) In addition, health care employers as defined in ORS 654.412 must record assaults against employees on the Health Care Assault Log. See OAR 437-001-0706.

(15) Multiple Business Establishments. You must keep a separate OSHA 300 Log for each establishment that you expect to operate for 1-year or longer.

(a) You may keep one OSHA 300 Log that covers all of your short-term establishments. You may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(b) You may keep the records for an establishment at your headquarters or other central location if you can:

(A) transmit information about the injuries and illnesses from the establishment to the central location within 7 calendar days of receiving information that a recordable injury or illness has occurred; and

(B) produce and send the records from the central location to the establishment within the time frames required by OAR 437-001-0700(20) and 437-001-0700(22) when you are required to provide records to a government representative, employees, former employees or employee representatives.

(c) You must link each employee with one of your establishments, for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short-term establishment.

(d) If the injury or illness occurs at one of your establishments, you must record the injury or illness on the OSHA 300 Log of the establishment where the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment where the employee normally works.

(16) Covered Employees. You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

(a) Record the injuries and illnesses to workers from temporary help agencies or employee leasing services only if you supervise these employees on a day-to-day basis.

(b) If a contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

(c) You and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to make sure that each injury and illness is recorded only once: either on your OSHA 300 Log (if you provide day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(17) Annual Summary and Posting Requirements. At the end of each calendar year, you must:

(a) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any problems;

(b) Use the OSHA 300A or equivalent form to create an annual summary of injuries and illnesses from the OSHA 300 Log;

(c) Certify that one of the following examined the OSHA 300 log and believe, based on knowledge of the process by which the information was recorded, that it is correct and complete.

(A) The highest ranking manager at the location where the log is compiled.

(B) If there is no management at the compiling location, any manager with jurisdiction over that location.

(d) You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

(e) You must post the summary no later than February 1 of the year following the year covered by the records and keep it posted until April 30.

(18) Paperwork Retention and Updating. You must save the OSHA 300 Log, the privacy case list (if any), the annual summary, and the DCBS Form 801 or equivalent forms for 5 years following the end of the calendar year that they cover.

(a) During the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

NOTE: For more information on retention of medical and exposure records, see OAR 437-002-1910.1020.

(19) Change of Business Ownership. If your business changes ownership, you must record and report work-related injuries and illnesses only for the time you owned the establishment. You must transfer the records to the new owner. The new owner must save all records of the establishment kept by the prior owner, but need not update or correct the records of the prior owner.

(20) Employee Involvement. You must involve your employees and their representatives in the recordkeeping system.

(a) Inform each employee of how they are to report an injury or illness to you.

(b)(A) Provide limited access to your injury and illness records for your employees and their representatives.

(B)(i) Your employees, former employees, their personal representatives, and their authorized collective bargaining representatives have the right to access the OSHA injury and illness records, with some limitations, as below.

(ii) A personal representative is anybody designated in writing by the employee or former employee. It also is the legal representative of a deceased or legally incapacitated employee.

(c)(A) When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(B) You must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, do not record the employee's name on the OSHA 300 Log for certain "privacy concern cases."

(d) When an employee, former employee, or personal representative asks for a copy of the DCBS Form 801 or equivalent describing an injury or illness to that employee or former employee, you must give the requester a copy of the DCBS Form 801 or equivalent containing that information by the end of the next business day.

(e) When an authorized employee representative asks for copies of the DCBS Form 801 or equivalent for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the releasable part of the DCBS Form 801 or equivalent section titled "Tell us about the case" or a similar section. You must remove all other information from the copy of the DCBS Form 801 or equivalent form that you give to the authorized employee representative.

(f) You may not charge for these copies the first time. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(21) Reporting Fatalities and Hospitalizations to Oregon OSHA. You must report the following to Oregon OSHA at 1-800-922-2689 or 503-378-3272 within the given time limits:

(a) Fatalities — 8 hours after occurrence or employer knowledge. You must report a fatality caused by a heart attack at work. You must report a fatality resulting from motor vehicle accidents that happen during the employees work shift. The local OR-OSHA field office safety or health manager will decide whether to investigate the incident, depending on the

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circumstances of the heart attack or motor vehicle accident. Report a fatality only if it occurs within 30 days of the accident.

(b) Catastrophe — 8 hours after occurrence or employer knowledge. For the ease of the reader the Definition for Catastrophe is — An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or an equivalent medical facility.

(c) Overnight Hospitalization — 24 hours after occurrence or employer knowledge of one or more employees. Overnight hospitalization is for medical treatment only. Hospitalization for observation is not reportable, nor is emergency room treatment. You must report injuries related to a heart attack or motor vehicle accident as well as other work related injuries. Report overnight hospitalizations to the nearest Oregon OSHA field office (Portland, Salem, Bend, Eugene or Medford).

NOTE: Oregon OSHA Field Office locations, telephone and Fax numbers are: Table — addresses [Table not included. See ED. NOTE.]

(d) Effective date. The effective date for reporting of a fatality resulting from motor vehicle accidents that happen during the employees work shift is January 1, 2007.

(22)(a) Providing Records to Government Representatives. When an authorized government representative asks for the records you keep in compliance with this standard, you must provide copies of the records within 4 business hours.

(b) Authorized government representatives are:

(A) a representative of the Oregon Department of Consumer and Business Services.

(B) a representative of the Secretary of Labor conducting an inspection or investigation under the Act.

(C) a representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health — NIOSH) conducting an investigation under Section 20(b) of the Act.

(23) Requests from the Bureau of Labor Statistics or DCBS. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, or a request for data from the Oregon Department of Consumer and Business Services, you must promptly complete the form and return it following the instructions on the survey form.

(24) Prohibition against discrimination. Oregon Revised Statute 654.062(5) prohibits discrimination against an employee for reporting a work-related fatality, injury or illness. It also protects the employee who files a safety and health complaint, asks for access to this rule, records, or otherwise exercises any rights afforded by law or rule.

[ED. NOTE: Forms, Graphics & Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 2-2002, f. & cert. ef. 3-12-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03; OSHA 7-2006, f. & cert. ef. 9-6-06; OSHA 11-2007, f. 12-21-07, cert. ef. 1-1-08; OSHA 8-2008, f. & cert. ef. 7-14-08

437-001-0706

Recordkeeping for Health Care Assaults

(1) Purpose. This rule implements the amendments to the Oregon State Employment Act, ORS 654.412 through 654.423, providing specific provisions for the recordkeeping and reporting requirements of health care assaults, and additional recordkeeping requirements as authorized under 654.025(2) and 656.726(4)(a).

(2) Scope and Definitions. This rule applies to health care employers and home health care services provided by health care employers. Health care employers only include hospitals and ambulatory surgical centers, which are defined in ORS 442.015:

"Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities.

"Ambulatory surgical center" means a facility that performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.

(3) Health care assault recordkeeping and reporting. In addition to existing general recordkeeping requirements in OAR 437-001-0700, Recordkeeping and Reporting, health care employers must use the Health Care Assault Log, or equivalent, to record assaults.

(a) See ORS 654.412 through 654.423 for details required to be recorded. Appendix A of 437-001-0706 provides instructions for completing the form. [Appendix not included. See ED. NOTE.]

(b) The Health Care Assault Log for 2008 (January 1, 2008–December 31, 2008) must be transmitted to Oregon OSHA by January 31, 2009. Electronic reporting: oshahealth@state.or.us This is the preferred method. Paper reporting: Oregon OSHA, Attention Health Care Assault reporting, PO Box 14480, Salem, OR 97309-0405. If email and/or electronic reporting are not available at your location, send the completed log to this address.

(c) The Hospital Administrator, or highest-level officer of the facility, must sign the first page of the Health Care Assault Log, certifying all information contained is true, accurate, and complete. This sheet, with signature, must be sent to Oregon OSHA either in hard-copy, or as a scanned electronic document.

(d) If the incident results in a serious injury or fatality, it must be immediately reported to Oregon OSHA, and recorded on the OSHA 300 Log. See OAR 437-001-0700.

(4) Other recordkeeping information. The following sections of OAR 437-001-0700 apply to health care assault recordkeeping and reporting:

Section (6) Work-relatedness

Section (14)(b) Forms

Section (15) Multiple Business Establishments

Section (16) Covered Employees

Section (19) Change of Business Ownership

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

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

Stats. Implemented: ORS 654.412 - 654.423

Hist.: OSHA 11-2007, f. 12-21-07, cert. ef. 1-1-08; OSHA 8-2008, f. & cert. ef. 7-14-08

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

Rule Caption: Health care providers may contract or agree to accept fees lower than fee schedule maximums.

Adm. Order No.: WCD 3-2008(Temp)

Filed with Sec. of State: 7-7-2008

Certified to be Effective: 7-7-08 thru 1-2-09

Notice Publication Date:

Rules Amended: 436-009-0003, 436-009-0020, 436-009-0022, 436-009-0030, 436-009-0040, 436-009-0090

Subject: Permanent OAR 436-009, "Oregon Medical Fee and Payment Rules," requires payment at the maximum allowed under the fee schedule or the health care provider's usual fee, whichever is less.

These temporary rules provide for payment under the terms of a contract to which a health care provider is a party: Unless otherwise provided by contract, insurers must pay providers at the providers' usual fee, or the amount set by the fee schedule, whichever is less. If a provider's fee is covered by multiple contracts, the insurer may apply only one contract to discount the provider's fee. If a provider's fee is controlled by multiple contracts, and one contract is with a certified managed care organization, the fee under the managed care organization's contract must be applied when the services were provided to an enrolled worker. The insurer must provide a copy of any contract that is the basis for a fee reduction to the director or the provider upon request. The insurer must notify the provider that they may request administrative review of the insurer's action in response to a medical bill within 90 days of the insurer's decision.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us

Rules are available on the Internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-009-0003

Applicability of Rules

(1) These rules apply to:

(a) All medical services rendered on or after the effective date of these rules; and

(b) All payments made under a contract with a medical provider, regardless of the date of service.

(2) These rules do not apply to any medical fee dispute that has been resolved by agreement or an administrative order that has become final by operation of law.

(3) Applicable to these rules, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09

ADMINISTRATIVE RULES

436-009-0020

Hospital Fees

(1) Hospital inpatient charges billed to insurers must include ICD-9-CM diagnostic and procedural codes. Hospitals must include their NPI on all bills. Unless otherwise provided for by contract, insurers must pay hospitals for inpatient services using the current adjusted cost/charge ratio (see Bulletin 290). For purposes of this rule, hospital inpatient services include, but are not limited to, those bills coded "111" through "118" in space #4 on the UB-04 billing form. The audited bill must be multiplied by the hospital's adjusted cost/charge ratio to determine the allowable payment.

(2) Hospital outpatient charges billed to insurers must include revenue codes, ICD-9-CM diagnostic and procedural codes, CPT® codes, HCPCS codes, and National Drug Codes (NDC), where applicable. Hospitals must include their NPI on all bills. Unless otherwise provided for by contract, insurers must pay hospitals for outpatient services according to the following: the insurer must first separate out and pay charges for services by physicians and other licensed medical service providers assigned a code under the CPT® and assigned a value in RBRVS for physician fees as identified by the revenue codes indicating professional services. These charges must be subtracted from the total bill and the adjusted cost/charge ratio applied only to the balance. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Physician work RVUs, Year 2008 transitional non-facility PE RVUs, and Malpractice RVUs columns. All other charges billed using both the hospital name and tax identification number will be paid as if provided by the hospital.

(3) Each hospital's CMS 2552 form and financial statement shall be the basis for determining its adjusted cost/charge ratio. If a current form 2552 is not available, then financial statements may be used to develop estimated data. If the adjusted cost/charge ratio is determined from estimated data, the hospital will receive the lower ratio of either the hospital's last published cost/charge ratio or the hospital's cost/charge ratio based on estimated data.

(a) The basic cost/charge ratio shall be developed by dividing the total net expenses for allocation shown on Worksheet A, and as modified in subsection (b), by the total patient revenues from Worksheet G-2.

(b) The net expenses for allocation derived from Worksheet A shall be modified by adding, from Worksheet A-8, the expenses for:

(A) Provider-based physician adjustment;

(B) Patient expenses such as telephone, television, radio service, and other expenses determined by the department to be patient-related expenses; and

(C) Expenses identified as for physician recruitment.

(c) The basic cost/charge ratio shall be further modified to allow a factor for bad debt and the charity care provided by each hospital. The adjustment for bad debt and charity care is calculated in two steps. Step one: Add the dollar amount for net bad debt to the dollar amount for charity care. Divide this sum by the dollar amount of the total patient revenues, from Worksheet G-2, to compute the bad debt and charity ratio. Step two: Multiply the bad debt and charity ratio by the basic cost/charge ratio calculated in subsection (3)(a) to obtain the factor for bad debt and charity care.

(d) The basic cost/charge ratio shall be further modified to allow an adequate return on assets. The director will determine a historic real growth rate in the gross fixed assets of Oregon hospitals from the audited financial statements. This real growth rate and the projected growth in a national fixed weight price deflator will be added together to form a growth factor. This growth factor will be multiplied by the total fund balance, from Worksheet G of each hospital's CMS 2552 to produce a fund balance amount. The fund balance amount is then divided by the total patient revenues from Worksheet G-2, to compute the fund balance factor.

(e) The factors resulting from subsections (3)(c) and (3)(d) of this rule will be added to the ratio calculated in subsection (3)(a) of this rule to obtain the adjusted cost/charge ratio. In no event will the adjusted cost/charge ratio exceed 1.00.

(f) The adjusted cost/charge ratio for each hospital will be revised annually, at a time based on their fiscal year, as described by bulletin. Each hospital must submit a copy of their CMS 2552 and financial statements each year within 150 days of the end of their fiscal year to the Information Management Division, Department of Consumer and Business Services. The adjusted cost/charge ratio schedule will be published by bulletin twice yearly, effective for the six-month period beginning April 1 and the six-month period beginning October 1.

(g) For newly formed or established hospitals for which no CMS 2552 has been filed or for which there is insufficient data, or for those hospitals that do not file Worksheet G-2 with the submission of their CMS 2552, the division shall determine an adjusted cost/charge ratio for the hospital based upon the adjusted cost/charge ratios of a group of hospitals of similar size or geographic location.

(h) If the financial circumstances of a hospital unexpectedly or dramatically change, the division may revise the hospital's adjusted cost/charge ratio to allow equitable payment.

(i) If audit of a hospital's CMS 2552 by the CMS produces significantly different data from that obtained from the initial filing, the division may revise the hospital's adjusted cost/charge ratio to reflect the data developed subsequent to the initial calculation.

(j) Notwithstanding subsections (c) through (i) of this section the payment to out-of-state hospitals, may be negotiated between the insurer and the hospital.

(A) Any agreement for payment less than the billed amount must be in writing and signed by a hospital and insurer representative.

(B) The agreement must include language that the hospital will not bill the worker any remaining balance and that the negotiated amount is considered payment in full.

(C) If the insurer and the hospital are unable to reach agreement within 60 days of the insurer's receipt of the bill, either party may bring the issue to the director for resolution. The director may order payment up to the amount billed considering factors such as, but not limited to, reasonableness, usual fees for similar services by facilities in similar geographic areas, case specific services, and any extenuating circumstances.

(k) Notwithstanding sections (1) and (2) of this rule, the director may exclude rural hospitals from imposition of the adjusted cost/charge ratio based upon a determination of economic necessity. The rural hospital exclusion will be based on the financial health of the hospital reflected by its financial flexibility index, as originally developed by Dr. William Cleverley. All rural hospitals having a financial flexibility index at or below the median for hospitals nationwide with a bond rating of BBB+, BBB, or BBB- will qualify for the rural exemption. Rural hospitals that are designated as critical access hospitals under the Oregon Medicare Rural Hospital Flexibility Program are automatically exempt from imposition of the adjusted cost/charge ratio.

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

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

Stat. Auth.: ORS 656.726(4), also see 656.012, 656.236(5), 656.327(2) & 656.313(4)(d)

Stats. Implemented: ORS 656.248, 656.252, 656.256 & 1991 OL Ch. 771, Sec. 2

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0701, 5-1-85; WCD 3-1985(Admin)(Temp), f. & ef. 9-4-85; WCD 4-1985(Admin)(Temp), f. & ef. 9-11-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1986(Admin)(Temp), f. 2-5-86, ef. 2-6-86; WCD 2-1986(Admin), f. 3-10-86, ef. 3-17-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 15-1990, f. & cert. ef. 8-7-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0090; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; Administrative correction 6-18-97; WCD 8-1997(Temp), f. & cert. ef. 7-9-97; WCD 16-1997, f. & cert. ef. 12-15-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09

436-009-0022

Ambulatory Surgical Center Fees

(1) An ambulatory surgical center (ASC) is any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization.

(a) Any ASC outside of Oregon must meet similar licensing requirements, or be certified by Medicare or a nationally recognized agency.

(b) Bills from an ASC shall be submitted on CMS 1500 form. The modifier "SG" shall be used to identify facility charges.

(2) Unless otherwise provided by contract, insurers must pay providers at the providers' usual fee, or the amount set by the fee schedule, whichever is less.

(3) Payment shall be made using the Medicare ASC groups, except:

(a) Arthroscopies (CPT® codes 29819 through 29898 except 29888 and 29889) are paid as Group 6.

(b) Arthroscopies (CPT® codes 29888 and 29889) are paid as Group 7.

(c) Services not listed in the Medicare ASC groups 1 through 9 shall be paid at the provider's usual rate.

(4) The ASC fee schedule is:

Group 1 — \$853.28
Group 2 — \$1,143.88
Group 3 — \$1,307.68
Group 4 — \$1,616.75
Group 5 — \$1,838.68
Group 6 — \$2,108.00
Group 7 — \$2,551.95
Group 8 — \$2,485.78
Group 9 — \$3,444.43

(5) The ASC fee includes services, such as:

(a) Nursing, technical, and related services;

(b) Use of the facility where the surgical procedure is performed;

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(c) Drugs, biologicals, surgical dressings, supplies, splints, casts, and appliances and equipment directly related to the provision of the surgical procedure;

(d) Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure;

(e) Administrative, record-keeping, and housekeeping items and services;

(f) Materials for anesthesia;

(g) Supervision of the services of an anesthetist by the operating surgeon.

(6) The ASC fee does not include services, such as physicians' services, laboratory, x-ray or diagnostic procedures not directly related to the surgical procedure, prosthetic devices, orthotic devices, durable medical equipment (DME), or anesthetists' services. The insurer shall pay for prosthetic devices, orthotic devices, and DME as provided in OAR 436-009-0080.

(7) When multiple procedures are performed, the highest payment group shall be paid at 100% of the maximum allowed fee. Each additional procedure shall be paid at 50% of the maximum allowed fee.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248 & 656.252

Hist.: WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09

436-009-0030

Insurer's Duties and Responsibilities

(1) The insurer must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(2) The insurer, or its designated agent, may request from the medical provider, any and all necessary records needed to review accuracy of billings. The medical provider may charge an appropriate fee for copying documents in accordance with 436-009-0070(1). If the evaluation of the records must be conducted on-site, the provider must furnish a reasonable work-site for the records to be reviewed at no cost. These records must be provided or made available for review within 14 days of a request.

(3) Insurers must date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the billing is submitted in proper form in accordance with OAR 436-009-0010(2) through (4) and clearly shows that the treatment is related to the accepted compensable injury or disease. Billings not submitted in the proper form must be returned to the medical provider within 20 days of receipt of the bill with a written explanation describing why the bill was not paid or what needs to be corrected. A request for chart notes on EDI billings must be made to the medical provider within 20 days of receipt of the bill. The number of days between the date the insurer returns the billing or requests for chart notes from the provider and the date the insurer receives the corrected billing or chart notes, shall not apply toward the 45 days within which the insurer is required to make payment.

(a) The insurer must retain a copy of each medical provider's bill received by the insurer or must be able to reproduce upon request data relevant to the bill, including but not limited to, provider name, date of service, date the insurer received the bill, type of service, billed amount, coding submitted by the medical provider as described in OAR 436-009-0010(2), and insurer action, for any non-payment or fee reduction other than a fee schedule reduction. This includes all bills submitted to the insurer even when the insurer determines no payment is due. The insurer must provide the specific reason(s) for non-payment or reduced payment of the billing, in writing, to the submitting medical provider. The insurer must provide a copy of any contract that is the basis for a fee reduction to the director or the provider upon request.

(b) Any service billed with a code number commanding a higher fee than the services provided shall be returned to the medical provider for correction or paid at the value of the service provided.

(c) When a medical provider submits a bill electronically, it shall be considered "mailed" in accordance with OAR 436-010-0005.

(4) Payment of medical bills is required within 14 days of any action causing the service to be payable, or within 45 days of the insurer's receipt of the bill, whichever is later.

(5) Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public.

(6) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code. The insurer must notify the provider that they may request administrative review of the insurer's action in response to a medical bill within 90 days of the insurer's decision. Resolution of billing disputes, including possible overpayment disputes, must be made in accordance with OAR 436-009-0008, 436-010-0008 and 436-015.

(7) Bills for medical services rendered at the request of the insurer and bills for information submitted at the request of the insurer, which are in addition to those required in OAR 436-010-0240 must be paid for within 45 days of receipt by the insurer even if the claim is denied.

(8) The insurer must establish an audit program for bills for all medical services to determine that the bill reflects the services provided, that appropriate prescriptions and treatment plans are completed in a timely manner, that payments do not exceed the maximum fees adopted by the director, and that bills are submitted in a timely manner. The audit shall be continuous and shall include no fewer than 10 percent of medical bills. The insurer must provide upon request documentation establishing that the insurer is conducting a continuous audit of medical bills. This documentation must include, but not be limited to, medical bills, internal audit forms, and any medical charge summaries prepared by private medical audit companies.

(9) The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a disputed claim settlement (DCS) were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

(10) Insurers that had at least 100 accepted disabling claims in the previous calendar year, as determined by the director, are required to submit detailed medical bill payment data to the Information Management Division of the Department of Consumer and Business Services at 350 Winter St NE, Room 300, PO Box 14480, Salem OR 97309-0405. Once an insurer has reached the minimum number of accepted disabling claims, they must continue to report in subsequent years unless there is a significant decrease below the 100 claim minimum which is expected to continue. The director will notify the affected insurers when they reach the minimum. If the insurer drops below the 100 disabling claim level or encounters other significant hardships, the insurer may apply to the director for exemption from the reporting requirement. The reporting requirements are as follows:

(a) The transmission data and format requirements are included in Appendix A of these rules and Appendix B of OAR 436-160. 436-160 explains the IAIABC ANSI 837 medical bill reporting requirements. To determine which appendix applies to required reporting insurers, see below.

(b) Each insurer must continue to report according to Appendix A until successfully completing IAIABC ANSI 837 testing under OAR 436-160. Once successfully completing testing, the insurer may only report via IAIABC ANSI 837.

(c) Group 1 is all required reporting insurers who are currently reporting data via IAIABC ANSI 837 in another jurisdiction. Each insurer in Group 1 must begin testing on July 1, 2008.

(d) Group 2 is the State Accident Insurance Fund Corporation. Group 2 must begin testing on April 1, 2009.

(e) Group 3 is all other required reporting insurers. Each insurer in Group 3 must begin testing on October 1, 2009.

(11) An insurer may request, in writing, additional time to report the requested data elements according to OAR 436-160. The insurer must demonstrate that the date to begin testing creates an undue hardship. The request must include a plan to begin testing within 12 months of the group's testing date, and may not extend beyond January 1, 2010.

(12) Undue hardship is demonstrated by providing the total required expenses to begin testing; the reporting cost per bill if transmitted directly by the insurer; and the total cost per bill if reported by a vendor.

(13) If the director allows additional time, the insurer must continue to report all medical billing data under Appendix A during the testing.

(14) The director may audit an insurer's actual payments reported for individual claims. An insurer is subject to a civil penalty if an audit determines that the insurer's error rate is 15 percent or higher in any field.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09

436-009-0040

Calculating Medical Provider Fees

(1) Unless otherwise provided by contract, insurers must pay providers at the providers' usual fee, or the amount set by the fee schedule, whichever is less.

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(2) If a provider's fee is covered by multiple contracts, the insurer may apply only one contract to discount the provider's fee. If a provider's fee is controlled by multiple contracts, and one contract is with a certified managed care organization for services provided to an enrolled worker, the fee under the managed care organization's contract must be applied.

(3) If a billed service is not covered by a contract with the provider or the fee schedule, then the insurer must pay the provider's usual fee. When there is no maximum payment established by the fee schedule, an insurer may challenge the reasonableness of a provider's billing on a case by case basis by asking the director to review the billing under OAR 436-009-0008. If the director determines the amount billed is unreasonable, the director may establish a different fee to be paid to the provider based on at least one of, but not limited to, the following: reasonableness, the usual fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.

(4)(a) When using RBRVS, the total RVU is determined by reference to the appropriate CPT® code and by adding the values of the Physician work RVU, Year 2008 transitional non-facility PE RVU or Year 2008 transitional facility PE RVU, and Malpractice RVU. The PE RVU is determined by the location where the procedure is performed: If the procedure is performed inside the medical service provider's office, use Year 2008 transitional non-facility PE RVUs column; if the procedure is performed outside the medical service provider's office, use Year 2008 transitional facility PE RVUs column. Use the global column to identify the follow up days when applicable. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Physician work RVUs, Year 2008 transitional non-facility PE RVUs, and Malpractice RVUs columns.

(b) When an Oregon Specific Code is assigned, the RVU for multidisciplinary program services is found in OAR 436-009-0060(5), or for other services in 436-009-0070 (13).

(c) When using the American Society of Anesthesiologists Relative Value Guide, a basic unit value is determined by reference to the appropriate Anesthesia code. The anesthesia value includes the basic unit value, time units, and modifying units.

(5) Payment according to the fee schedule must be determined by multiplying the assigned RVU or basic unit value by the applicable conversion factor. Where the code is designated by an RVU of "0.00" or IC (individual consideration) for Anesthesia codes, the insurer must pay at the provider's usual rate.

(6) The table below lists the conversion factors to be applied to services, assigned an RVU, rendered by all medical providers.

Service Categories, Conversion Factors
Evaluation / Management, \$64.79
Anesthesiology, \$53.45
Surgery, \$86.44
Radiology, \$68.00
Lab & Pathology, \$60.00
Medicine, \$75.04
Physical Medicine and Rehabilitation, \$65.79
Multidisciplinary and Other Oregon-Specific Codes, \$60.00
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09

436-009-0090

Pharmacy Fees

(1) Unless otherwise provided by contract, insurers must pay providers for prescription medication at the providers' usual fee, or the amount set by the fee schedule, whichever is less.

(a) "AWP" means the Average Wholesale Price effective on the day the drug was dispensed.

(b) The maximum allowable fee is calculated according to the following table.[Table not included. See ED. NOTE.]

(2) All prescription medications are required medical services and do not require prior approval under the palliative care provisions of OAR 436-010-0290.

(3) Under ORS 689.515(2) licensed providers may dispense generic drugs to injured workers.

(4) Payment for Oxycontin, and COX-2 inhibitors is limited to an initial five-day supply unless the prescribing medical service provider writes a clinical justification for prescribing that drug rather than a less costly drug with a similar therapeutic effect.

(a) The clinical justification may accompany the prescription and be submitted by the pharmacist or may be given directly to the insurer by the medical provider.

(b) Clinical justification means a written document from the medical service provider stating the reason he or she believes the drug ordered is the one the patient should have. The justification may be included on the pre-

scription itself and may simply be a brief statement. Insurers and self-insured employers cannot challenge the adequacy of the clinical justification. However, they can challenge whether or not the medication is excessive, inappropriate, or ineffectual in accordance with ORS 656.327.

(c) An additional clinical justification is not necessary for refills of that medication.

(5) Insurers shall use the prescription pricing guide published by First DataBank Inc, Thomson Healthcare, Inc., or Facts & Comparisons (a Wolters Kluwer Health, Inc., Company) for calculating payments to the licensed provider. Insurers must update their source at least monthly.

(6) The worker may select the pharmacy, except for claims enrolled in a managed care organization (MCO) where pharmacy service providers are specified by the MCO contract.

(7) Except for sections 2, 3, 4 and 6 of this rule, this rule does not apply to a worker's direct purchase of prescription medications, and does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(8) The insurer shall pay the retail-based fee for over-the-counter medications.

(9) Drugs dispensed by a hospital (inpatient or outpatient) shall be billed and paid according to OAR 436-009-0020.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09

Department of Corrections Chapter 291

Rule Caption: Substance Abuse Urinalysis Testing of Inmates in DOC Facilities.

Adm. Order No.: DOC 15-2008(Temp)

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08 thru 12-28-08

Notice Publication Date:

Rules Amended: 291-042-0005, 291-042-0010, 291-042-0011, 291-042-0015, 291-042-0025, 291-042-0035

Rules Suspended: 291-042-0045

Subject: Amendment and repeal of these temporary rules is necessary to update the criteria and methodology by which urine samples of inmates incarcerated in Department facilities are collected and tested for substance of abuse. The new methodology will increase the number of substances tested. Other changes are necessary to update terminology and reflect operational changes within the Department.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-042-0005

Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish methods and criteria by which substance of abuse urinalysis testing will be governed within the Department of Corrections Facilities.

(3) Policy: It is the policy of the Department of Corrections to:

(a) Eliminate the presence and use of illegal drugs and substances of abuse in its facilities (zero tolerance) and to monitor compliance with laws through the use of substance of abuse urinalysis testing that is accurate and reliable; and

(b) Establish criteria for substance of abuse urinalysis testing of inmates incarcerated in Department of Corrections facilities.

(A) The Department has a responsibility to protect the public, to provide a safe environment for staff and inmates, and to enforce the rules governing inmate prohibited conduct. Substance abuse presents a threat to the safety of all staff and inmates. Substance of abuse testing of inmates through selection and for cause testing criteria, combined with appropriate graduated sanctions, is an effective means of suppressing substance abuse, substance trafficking and related violations which are prohibited within Department of Corrections facilities in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(B) These measures are implemented to reduce institution violence, and to the extent feasible, ensure that inmates released from prison are substance free. The testing process further identifies inmates who have continued to have a substance abuse problem while incarcerated, and who could be monitored more closely while on parole. Substance of abuse testing also

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provides a mechanism to identify those inmates with substance abuse problems and target them for more frequent testing.

(C) The Department shall use the same gender staff to administer the collection of urine samples.

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

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

Hist.: CD 1-1986(Temp), f. & ef. 1-16-86; CD 5-1986, f. & ef. 3-14-86; CD 18-1990, f. & cert. ef. 9-21-90; CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

291-042-0010

Definitions

(1) **Adulterated or Invalid:** A urine sample that has an unauthorized substance added to it and which may not be of a sufficient amount to render a "positive" result.

(2) **Chain of Custody:** The handling of specimens in a way which supports legal testimony to prove that the sample integrity and identification of the sample have not been violated, as well as the documentation describing these procedures from specimen collection to final report.

(3) **Clinical Laboratory:** A facility licensed by Oregon Health Division or the state licensing board of the state in which the laboratory is operating that is certified by the Substance Abuse Mental Health Services Administration (SAMHSA) to perform confirmatory testing for substances of abuse on urine or other body fluid.

(4) **Dilute:** A urine sample that has been contaminated, or altered in some manner, that has been tested for Creatinine and Specific Gravity and found to be dilute by the laboratory.

(5) **Medical Status Report:** A report which lists names of inmates who, due to a documented medical condition, may need additional time and/or medical assistance besides the initial two-hour time period to provide a urine sample.

(6) **Substance of Abuse (SOA) Coordinator:** An individual appointed by the functional unit manager who is responsible for all aspects of substance of abuse testing in the facility, including quality control, collecting urine specimens, and completion of required forms and reports.

(7) **Substituted:** A urine sample found to not be consistent with normal human urine by the clinical laboratory.

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

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

Hist.: CD 1-1986(Temp), f. & ef. 1-16-86; CD 5-1986, f. & ef. 3-14-86; CD 18-1990, f. & cert. ef. 9-21-90; CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

291-042-0011

Training Requirements

The functional unit manager of sites which are collecting urine samples for the purpose of urinalysis substance of abuse testing will appoint an SOA coordinator. The SOA coordinator will insure that only those persons who have successfully completed training will collect urine samples for the purpose of urinalysis testing.

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

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

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

Hist.: CD 16-1994, f. 8-17-94, cert. ef. 9-1-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

291-042-0015

Urinalysis Testing

(1) Inmates shall furnish Department of Corrections staff with a urine sample when ordered to do so.

(a) If, after receiving an order to provide a urine sample, an inmate indicates that he or she is presently unable to provide a urine sample, the inmate will be permitted an initial two hours to provide the sample. During this time, staff will place the inmate in an area where he/she can be observed. The inmate may be offered an eight ounce container of water after the first half hour and at 30-minute intervals during this initial two hour period.

(b) If an inmate has not provided the required sample within this time period and is not listed on the medical status report that he/she should be allowed additional time, staff will proceed in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(2) After the initial two-hour period, inmates listed on the medical status report will be allowed additional time if needed to provide a urine sample. The following will occur:

(a) The inmate will be strip searched, ordered to wash his/her hands, provided a jump suit and placed in a secure water controlled area that is observable by staff.

(b) The inmate will be ordered to urinate only in the sample bottle and to notify staff before urinating, so the collection can be observed.

(c) At the beginning of the second hour in the water controlled area, the inmate will be offered eight ounces of water and an additional eight ounces of water every hour until the inmate has been given five eight ounce containers of water.

(d) The inmate may be held in the water controlled area until the inmate either refuses to supply or supplies the urine sample. Health Services will be notified when an inmate has been held in a water controlled area for 24 hours and has not yet urinated.

(3) If at anytime during either of these processes the inmate refuses to supply a urine sample, staff shall proceed in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(4) Same gender staff should seek to obtain the sample from the inmate in a place and manner that will avoid undue embarrassment to the inmate. Staff shall utilize proper blood and body fluid precautions when taking or processing urine samples.

(5) Before an inmate provides a urine sample, he/she will be ordered to wash his/her hands thoroughly with soap, rinse thoroughly and dry his/her hands with a towel. When providing the sample, the inmate shall lower his/her pants, skirt or other garments to his/her ankles to afford staff an unobstructed view.

(6) If the inmate alters, contaminates or discards a urine sample, staff will proceed in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The inmate will not be afforded the opportunity to provide another sample at this time.

(7) After a sufficient sample for urinalysis testing has been obtained (minimum of 45 ML), the inmate shall pour the sample into two vials filling one vial to the 15 ML line and the other to the 30 ML line, secure lids on both vials, rinse the exterior of the vials if necessary, and hand the sample collection vials to staff.

(a) The inmate will dispose of any remaining urine in the collection cup into the urinal or toilet and dispose of the collection cup according to established institution bio-hazard protocols.

(b) Staff may ask the inmate to identify any medication he/she is currently taking. If necessary, a separate sheet of paper may be used to list additional medications. This list may be maintained by the SOA coordinator for further use.

(8) Upon taking custody of the vials with the inmate's urine sample, staff shall follow the prescribed procedure for labeling the sample and send the sample to an approved clinical laboratory for testing.

(9) The SOA coordinator shall ensure that the UA Chain of Custody form is properly completed and reflects the following information:

(a) The name and SID number of the inmate from whom the urine sample was obtained;

(b) The date and time the sample was obtained;

(c) The name and signature of the staff member that collected the sample;

(d) The specific approved panel test requested; and

(e) The signature of the inmate providing the sample along with the date. If the inmate refuses to sign the Chain of Custody form, staff will write "REFUSED" in the signature block, initial it, and record the date.

(10) It is the responsibility of the laboratory that performs the confirmation testing to maintain a proper chain of custody of the sample.

(11) An inmate whose urine sample tests "positive" for a controlled substance shall be issued a misconduct report in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(12) Any urine sample test which returns as a "dilute," "adulterated," "invalid" or "substitute" will be treated as a "positive" for a substance of abuse. The inmate providing that sample will be issued a misconduct report in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

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

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

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

Hist.: CD 1-1986(Temp), f. & ef. 1-16-86; CD 5-1986, f. & ef. 3-14-86; CD 18-1990, f. & cert. ef. 9-21-90; CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

291-042-0025

Baseline Test Selection Protocol

(1) A percentage of the inmate population will be selected by the Department's Research Unit each month for urinalysis testing. Selection will be completed by a designated computer program. The Research Unit will forward these lists to the functional unit designees who are authorized to receive and secure these lists until testing.

(2) A copy of these lists will be sent to the Investigations Unit.

(3) The list shall remain "confidential" and be marked as such at all times. Only those staff members designated to receive the list and those designated to perform the collection will view the list. Inmates are strictly

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prohibited from observing the list at any time. Inmates are strictly prohibited from entering any area where the list is located.

(4) Staff will draw samples from each inmate on the list within 72 hours and forward those samples to the approved laboratory. If a listed inmate or an entire list of inmates is not tested for any reason (transferred, out-to-court, staff shortage, etc.), a written explanation signed by the functional unit manager or his/her designee will be forwarded to the Research Unit within 72 hours from the beginning date when the samples were supposed to be collected.

(5) Results of baseline testing will be maintained at an approved DOC location or storage medium.

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

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

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

Hist.: CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

291-042-0035

Testing Profile Requirements

(1) A urine specimen may be obtained by trained Department staff from any inmate, regardless of the inmate's programming when:

(a) The inmate has a history of drug use;

(b) The inmate is going out on or returning from an authorized, unescorted leave;

(c) There is suspicion that the inmate is participating in drug use;

(d) The inmate is selected to provide a urine specimen; or

(e) The inmate is assigned to a work crew outside the facility.

(2) Mandatory Testing: When there is suspicion that an inmate is participating in drug use, a specimen shall be obtained.

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

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

Hist.: CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

291-042-0045

Screen Testing

(1) Individuals who perform screening tests for substances of abuse must complete a training course approved by the manufacturer or provider of the screen testing equipment. The course and curriculum will be approved by the Oregon Health Division. All screen testing performed by department staff prior to completing their course and curriculum standards will be directly supervised by the SOA coordinator or his/her designee. A certificate of satisfactory completion, including dates and hours of training completed, shall be kept by the SOA coordinator at each facility. A copy shall also be on file with the Investigations administrator.

(2) Protocols and records of all testing shall be maintained as described in this section and shall be followed.

(3) Written protocol manuals provided by the manufacturer of the screen testing equipment shall be available to individuals performing screen tests on urine samples. The written protocols must describe the test limitations and the use of approved standards and quality control including:

(a) Date and time the specimen was obtained;

(b) Date and time the test was performed;

(c) Lot number of the test kit used, test results, including results of controls; and

(d) Signature or initials of person performing the test.

(4) Quality control procedures as described in this subsection shall be followed:

(a) Each instrument shall be calibrated according to the manufacturer's specifications, with each new lot or shipment of reagents and after major maintenance;

(b) For automated instruments, a positive and negative control shall be included at least once per day of use, or following each tenth sample analyzed;

(c) All calibration and control data shall be recorded;

(d) The minimum detectable limit for each substance tested shall be available;

(e) Limits for controls shall be clearly stated and recorded. The corrective action taken when analyses are outside these control limits shall be clearly stated and recorded;

(f) No reagent shall be used beyond its expiration date.

(g) A record shall be kept of each testing individual's quality control performance. This record will be reviewed by the SOA coordinator at least every six months;

(h) Twice a year each Department of Corrections facility which uses automated screen testing equipment shall participate satisfactorily in a proficiency testing program. The proficiency testing programs available from the College of American Pathologists or the American Association of Bioanalysts, or other proficiency testing program acceptable to the Oregon Health Division may be used;

(i) Proficiency testing results and control data shall be reviewed every six months by the SOA coordinator and corrective action shall be taken and documented when appropriate. A copy of the report and corrective action must be sent to the Investigations administrator for review;

(j) If a screen test shows a result indicating the presence of a substance of abuse in the body and the inmate has not admitted to specific drug use, a confirmatory test shall be conducted in a licensed clinical laboratory if the results are to be used to deprive or deny any person of any benefit, probation, or parole;

(k) All initial screen tests will test minimally for the presence of THC; amphetamines; opiates; and cocaine. Additional tests for adulteration, dilutes, masking drugs, LSD, PCP, alcohol may be performed by the contracted state lab which performs confirmation testing.

Stat. Auth.: ORS 179.050, 423.020, 423.030 & 423.075

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

Hist.: CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-24-00; Suspended by DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

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Rule Caption: Inmate Trust Accounts.

Adm. Order No.: DOC 16-2008(Temp)

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08 thru 12-26-08

Notice Publication Date:

Rules Amended: 291-158-0005, 291-158-0015, 291-158-0055

Subject: These temporary rule amendments are necessary in order to clarify and conform the Department of Corrections' rules to reflect the Department's historical policy and practice to assess inmate trust accounts for court-ordered costs and fees in judicial review proceedings, in habeas corpus and post-conviction cases, in tort actions against a public body, and in other proceedings as authorized or required by law. The Department intends that these temporary rule amendments apply retroactively to assessments made by the Department against an inmate's account for these purposes prior to, on, and after the effective date of the rule amendments.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-158-0005

Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policies and procedures for the establishment and administration of inmate trust accounts, and the safeguarding of inmate funds for use for authorized expenditures and assessments during incarceration and to assist in offsetting the costs of the release plan.

(3) Policy:

(a) It is the policy of the Department of Corrections to place certain limitations on the use of inmate funds. Each inmate is responsible to reserve funds for meeting his/her needs upon release. Inmates' personal funds will be controlled utilizing accepted accounting procedures. Monies received which are not in accordance with this rule will be considered contraband and will be placed in the Inmate Welfare Fund. Every person in possession of inmate monies or trust funds will be responsible to follow this rule.

(b) It is the policy of the Department of Corrections to assess an inmate's account for court-ordered costs and fees in judicial review proceedings, in habeas corpus and post-conviction cases, in tort actions against a public body, and in other proceedings as authorized or required by law. The Department intends that its rules authorizing assessments against an inmate's account for these purposes apply retroactively to assessments made by the Department prior to, on, and after the effective date of these rules.

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075

Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93; DOC 16-2008(Temp), f. & cert. ef. 7-1-08 thru 12-26-08

291-158-0015

Trust Accounts

(1) The Department of Corrections Central Trust Accounting Unit will establish one trust account for each inmate which corresponds to the SID number issued to each inmate. The account will accrue interest at a rate determined by applicable statutes. The Department of Corrections may assess an inmate's trust account for sanctions resulting from the inmate's disciplinary hearings; garnishment actions' determined caused by the courts; court-ordered costs and fees in judicial review proceedings, in

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habeas corpus and post-conviction cases, in tort actions against a public body, or in other proceedings as authorized or requirement by law; damages or destruction caused by willful misconduct; programs of costs associated with the facility, release, work release, and industries; copying costs; postage; medically required services including prostheses or other devices; authorized self-elected activities; or to collect illegal and erroneous transactions.

(2) At the time of reception and orientation and each year thereafter, each inmate will be informed that he/she is responsible for saving funds for release purposes and that any monies received in the trust account during incarceration will tallied and the total figure may be the basis for approval or denial of release subsidies in accordance with ORS 421.125 and the Department of Corrections rule on Release Subsidies (Inmate) (291-57)

(3) The Central Trust Accounting Unit shall send to each inmate with an active trust account a monthly trust statement that reflects the transaction for the monthly period. Any Questions regarding the correctness of the transactions reflected in the monthly statement must be submitted in writing by the inmate to the inmate's assigned counselor within fifteen days of the date of the monthly statement. Each inmate shall be responsible to retain their own trust statement. Additional copies of the monthly trust statement shall be available for purchase by inmates from the Central Trust Account Unit at a cost of \$1.00.

(4) Funds held in an inmate's trust account shall be disbursed to the inmate upon release from a Department of Corrections facility on parole, post-prison supervision, or discharge of sentence, unless the funds are subject to setoff by the Department in accordance with the provision of OAR 291-158-065. An inmate approaching release shall not be allowed to initiate a withdrawal request within three days of the scheduled release. Any funds held in an inmate trust account that remains unclaimed one year after the inmate has died, escaped, or been released from the Department of Corrections facility on parole, post-prison supervision, or discharged of sentence, shall be reported to the Director of the Division of State Lands for proper distribution.

(5) All monies received for an inmate that are authorized for receipt in accordance with the provisions of these rules shall be credited to the inmate's trust account. However, inmates participating and receiving compensation in projects certified under the Department of Corrections rule on Private Sector Prison Industries Program OAR 291-705-005 to own trust account debited and funds disbursed in accordance with the provision of those rules. Inmates who are indebted to the Department shall have their trust account debited and funds disbursed in accordance with the provisions of OAR 291-158-065.

(6) Transfer of funds from one inmate's account to another, including transfers facilitated by a person who is not under the supervision of the Department of Corrections, is prohibited.

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030 & 423.075

Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Former sections (7), (8), (9), (10), (11) & (12) renumbered to 291-158-0025, 291-158-0035, 291-158-0045, 291-158-0055, 291-158-0065 & 291-158-0075; DOC 16-2008(Temp), f. & cert. ef. 7-1-08 thru 12-26-08

291-158-0055

Authorized Expenditures

(1) Funds in the trust account may be used by an inmate for the purchase of authorized personal necessities; purchases in the canteen; support of dependents; Board of Parole and Post-Prison Supervision materials; copying expenses; postage; contributions to charity; and self-elected programs, services, and assistance provided by the Department of Corrections or approved by and made available through the Department of Corrections. The inmate may request that funds in excess of his/her personal and dependents' needs be disbursed with the approval of the functional unit manager or designee if such request is reasonable and the purpose verifiable. Request to purchase materials from the Board of Parole and Post-Prison Supervision must be sent directly to the Board prior to initiating a withdrawal request to determine if the materials are available and/or may be disclosed.

(2) Each inmate expenditure from the individual trust account will require the inmate to submit a completed withdrawal request (CD 28) to the functional unit manager or designee. Only a withdrawal request with the authorized employee signature will be recorded on the inmate trust account. If funds are not available to cover the withdrawal request, the form will be returned to the inmate marked with an explanation.

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

Stat. Auth.: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, and 423.075

Stats. Implemented: ORS 30.643, 34.365, 34.370, 138.590, 144.335, 179.040, 423.020, 423.030, and 423.075

Hist.: CD 6-1985(Temp), f. & ef. 6-17-85; CD 63-1985, f. & ef. 8-16-85; CD 20-1990(Temp), f. 9-28-90, cert. ef. 10-12-90; CD 24-1990(Temp), f. & cert. ef. 11-2-90; CD 9-1991, f. & cert. ef. 4-3-91; CD 10-1991(Temp), f. & cert. ef. 4-22-91; CD 24-1991, f. & cert. ef. 10-8-91; CD 16-1992(Temp), f. 7-31-92, cert. ef. 8-3-92; CD 1-1993, f. 1-25-93, cert. ef. 1-28-93, Renumbered from 291-158-0015(10); DOC 16-2008(Temp), f. & cert. ef. 7-1-08 thru 12-26-08

Department of Energy Chapter 330

Rule Caption: Establish Business Energy Tax Credit (BETC) eligibility criteria for renewable resource equipment manufacturing facilities.

Adm. Order No.: DOE 4-2008

Filed with Sec. of State: 6-19-2008

Certified to be Effective: 6-20-08

Notice Publication Date: 5-1-2008

Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0150

Subject: • Establish rules for renewable energy manufacturing facility eligibility, including but not limited to:

- raising the maximum eligible cost to \$40 million;
- establish standards for determining distinct facility characteristics;
- establish criteria to determine certified costs for a renewable energy resource equipment manufacturing facility when the economic revenue forecasts meet the criteria for economic downturn set out in the statute;
- establish criteria to determine when a facility does not possess the likelihood of success;
- establish criteria to determine when a facility is not likely to increase employment in Oregon to a minimum threshold level; and
- establish criteria to estimate whether an applicant is unlikely to base or expand a facility in Oregon on allowance of the tax credit.

• Make editorial and housekeeping changes to OAR 330-090-0105 through OAR 330-090-0150.

Rules Coordinator: Michael W. Grainey—(503) 378-5489

330-090-0105

What a BETC Is

A Business Energy Tax Credit for up to 35 percent of the eligible cost of qualifying facilities may be offset against owed Oregon income and corporation excise taxes. Qualifying renewable energy resource equipment manufacturing facilities, and renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 are eligible for a tax credit equal to 50 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities completed on or after January 1, 2007 are eligible for a tax credit of up to \$9,000 and qualifying high performance homes completed on or after January 1, 2007 are eligible for a tax credit of up to \$12,000. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications for facilities eligible for a 35 percent tax credit received by ODOE on or after December 1, 2007. These rules also apply to applications for; qualifying renewable energy resource facilities, including high efficiency combined heat and power facilities; qualifying homebuilder installed renewable energy facilities and high performance homes facilities received by ODOE on or after January 1, 2007. These rules apply to renewable energy resource equipment manufacturing facilities approved for preliminary certification on or after January 1, 2008, and to tax years beginning on or after January 1, 2008. These rules are effective June 20, 2008.

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 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 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

330-090-0110

Definitions

(1) "Alternative Fuel": A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency

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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)": A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This 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. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) "Applicant": An applicant means:

(a) A person who applies for a preliminary certification of a Business Energy Tax Credit 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 pass-through partner, or commit to select such a partner prior to final certification.

(C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.

(b) A person who applies for a final certification of a Business Energy Tax Credit under this section must be the facility owner.

(c) The tax credit certificate will be issued to a facility owner, 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, and

(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, and

(c) Ethanol ($\text{CH}_3\text{CH}_2\text{OH}$) 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, and

(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.

(7) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(8) "Building Automation Controls Facility": Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 19(b)(D) of this rule.

(9) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(10) "Carpool Facility": A facility in which riders share the same vehicle to commute between different communities or neighborhoods on a regular basis.

(11) "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.

(12) "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.

(13) "Commissioning": The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(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;

(i) Separate from the lease for the business premises.

(ii) 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 detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(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 which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(18) "Cooperative Agreement Organization": ODOE 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 ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(19) "Cost": The actual capital costs and expenses the Director finds are needed to acquire, erect, build, modify, or install a facility under these rules. Ancillary costs that otherwise would be incurred (such as replacing wiring to meet current building code) are not eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions, other than costs financed by grants excluded by ORS 315.356(1) that are not 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.

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(a) Cost can include payments for:
(A) Fees to finance, design or engineer the facility;
(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;
(C) All materials and supplies needed for the facility; and
(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system).

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility; or

(E) Administrative costs to apply for a tax credit for a facility including, but not limited to, the Business Energy Tax Credit review charge and the cost paid to secure a pass-through partner for the facility.

(F) 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. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features.

(A) In commercial new construction, it is the difference between building to 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 one to 15-year simple payback period unless specified below. 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 weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic eligible facility costs will be limited on a dollar-per-watt basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

(i) The precertified eligible costs will be effective for 36 months for public facilities and 12 months for all other facilities from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(E) For solar thermal systems, the maximum eligible cost shall be limited on a capacity basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

(i) The precertified eligible costs will be effective for 12 months from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(F) Sustainable Building, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities are exempt from simple payback requirements.

(g) Costs for space conditioning or individual metering a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be 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 (j) below.

(h) Costs for space and water heating equipment as defined in OAR 330-090-0110(20)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(i) 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, parking cash out, carpool/vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D) rideshare matching service, 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.

(j) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the facility cost based on similar facilities, but not exceeding 40 percent of the purchase cost.

(k) 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 ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(l) Sustainable Building Facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using the table in the Business Energy Tax Credit Technical Requirements for Sustainable Building facilities OAR 330-090-0135.

(m) 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 and the business energy tax credit may not exceed eligible costs.

(20) "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 Web site of the Oregon Department of Energy.

(21) "Director": The Director of the Oregon Department of Energy or designees.

(22) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(23) Energy Facility": means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization 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.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(24) "Facility": means an energy facility, recycling facility, rental weatherization facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system, a renewable energy resource equipment manufacturing facility or Research, Development & Demonstration facility that complies with these rules and any applicable BETC Technical

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Requirements. It 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 or recycling facility.

(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 BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(19)(c), of a fuel switching facility will be allowed if the upgrade complies with these rules.

(d) A new electric motor that complies with the BETC Technical Requirements.

(e) 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.

(f) An energy facility does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) 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.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A); and

(I), which were issued an occupancy permit on or after January 1, 1996.

(J) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(25) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Facility, facility eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area 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.

(26) "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.

(27) "Facility Owner": An applicant who purchases and owns a qualified facility.

(28) "Facility Start": The date the applicant chooses to write on the preliminary certificate application that meets one of the following criteria:

(a) A non-refundable deposit is placed on the facility equipment;

(b) A purchase order is placed for the equipment;

(c) A contract is executed for the design of the facility;

(d) A document is executed that obligates the applicant to proceed with a facility; or

(e) The date facility information for a preliminary certification application is received by a cooperative agreement organization.

(29) "Final Certification": Final certificate issued after completion of an approved BETC facility.

(30) "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).

(31) "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 Business Energy Tax Credit.

(32) "High Efficiency Combined Heat and Power": 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. The fuel-chargeable-to-heat rate would need to be 5,440 Btu/kWh. (See BETC Technical Requirements for formula and other specifications.) This renewable energy resource facility would be eligible for a 50 percent Business Energy Tax Credit. Facilities that do not meet this requirement may be eligible for a 35 percent tax credit under Combined Heat and Power facilities or may qualify in part for a tax credit relating to the heat recovery portion of the facility.

(33) "High Performance Home:" is an energy facility that is a new dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code which has its own space conditioning and water heating systems, complies with the specifications listed in the BETC Technical Requirements and is intended for sale to an end-use homebuyer. A High Performance Home must include a Homebuilder Installed Renewable Energy System that produces at least 1 kWh per square foot of conditioned space on an annual basis for photovoltaics or the equivalent for other technologies as listed in the BETC Technical Requirements. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying High Performance Home features qualifying for the Business Energy Tax Credit.

(34) "Homebuilder Installed Renewable Energy Facility:" is a renewable energy resource facility in a single family dwelling that meets specified technical requirements as listed in the BETC Technical Requirements. The renewable energy resource facility must be approved by a technician certified by the Oregon Department of Energy. Renewable energy resource facilities must be connected to the home's main service panel and the installers must provide a two-year warranty covering all parts and labor. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying Homebuilder Installed Renewable Energy Facility features qualifying for the Business Energy Tax Credit. Renewable energy resource facilities may include:

(a) Photovoltaic — The credit amount is based on \$3 per watt of installed capacity.

(b) Solar Domestic Water Heating — The credit amount is equal to \$0.60 per kWh saved as determined by the ODOE solar domestic water heating yield table.

(c) Active Solar Space Heating — The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by ODOE staff.

(d) Passive Solar — The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space.

(e) 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 \$2.00 per kWh saved.

(35) "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 list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

(36) "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.

(37) "Industrial Process Energy Facility": An energy facility that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) An energy facility that provides substantial energy savings from conservation, or;

(b) A renewable energy resource facility that provides substantial energy savings through the use of renewable resources; or

(c) A renewable energy resource facility that provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) A renewable energy resource facility that prepares or conditions alternative fuels for distribution or dispensing; or

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(e) An energy facility that increases industrial process efficiency through recycling market development; or

(f) An energy facility that provides emergency replacement inventory of electric motors as defined in (20)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(38) "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.

(39) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(40) "Lighting Facility": Means an energy facility that will reduce the affected lighting energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the facility or that will be subsequently replaced will be recycled and, if so, how.

(41) "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.

(42) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(43) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(44) "Necessary Feature": A feature for which its 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 in OAR 330-090-0110(47); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(45) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b). Also referred to as the "pass-through rate."

(46) "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.

(47) "Parking Cash Out" means a facility that offers cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(48) "Pass-through Option": An option that allows a facility owner to transfer the facility's tax credit eligibility to persons or businesses in return for a cash payment equivalent to the net present value.

(49) "Pass-through Partner": A person or business or persons or businesses accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(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 ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE's Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE'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": A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(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": means an energy facility with equipment used in a business for recycling in communities not subject to OAR 340-090-0030(2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any facilities which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(b) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(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" includes, but is not limited to:

(a) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, solar energy, wind power, water power or geothermal energy; or

(b) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and:

(A) That does not exceed 10 megawatts of installed capacity; or

(B) Qualifies as a research, development or demonstration facility.

(59) Renewable Energy Resource Facility: means an energy facility used in the processing or utilization 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) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) through (e):

(a) A facility that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized, and complies 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

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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.

(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 Business Energy Tax Credit; 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 also include costs inherent in a research, development and demonstration facility which may not result directly in saved or produced energy. Such costs may include facility design, monitoring, assessment, evaluation and reporting, including development of standards, specifications, policies and procedures facilitating technology transfer and instruments, controls, and other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(e) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110(19)(f).

(62) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

(63) "Rideshare Matching Services Program": A facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis.

(64) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

(65) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

(66) "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.

(67) "Substantial Energy Savings": Means that ODOE 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 facility as defined under "Sustainable Building" of this rule; or

(d) The facility measures are defined in the BETC Technical Requirements as 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.

(68) "Sustainable Building 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

(b) 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.

(c) For a Sustainable Building Facility to be eligible for a tax credit it must also comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(69) "Transportation District": A transportation district included in ORS 184.675(7).

(70) "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 or from an office near 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 or used 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 purchase of 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.

(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.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Eligible costs 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 non-profit 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) Parking cash out is defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer

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may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(j) 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.

(k) 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.

(l) Rideshare Matching Service is defined as a facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis. 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.

(m) Carpool/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.

(n) 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.

(71) "Transportation Provider": means a public, private, or non-profit entity that provides transportation services to members of the public.

(72) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(73) "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.

(74) "Vanpool Program": A is defined as a facility that is 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.

(75) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.

(76) "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.

(77) "Year": Calendar year.

[Publications: 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

330-090-0120

What Qualifies for a BETC

Both the party asking for a BETC and a facility must comply with these standards.

(1) Standards for an Applicant — An applicant must:

(a) Be an applicant as defined by these rules; and

(b) Own or contract to buy a facility; or

(c) Own or contract to buy or lease an Oregon firm that will use or lease the facility or sell power from the facility.

(2) Standards for a Facility — A facility must:

(a) Be a facility as defined by these rules; and

(b) Comply with or have a variance from the land use laws of the city or county where the facility will be located; and

(c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules.

(3) Standards for a Leased Facility: A BETC may be granted to the owner of a facility who leases the facility for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

(4) Standards for a Renewable Energy Resource Equipment Manufacturing Facility: To be eligible for a Business Energy Tax Credit, the applicant must demonstrate that the facility will be used solely to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities. A facility that is used to manufacture equipment, machinery or other products that will not be used exclusively for renewable energy resource facilities is not eligible for the credit as a renewable energy resource equipment manufacturing facility. An application for a Business Energy Tax Credit for a renewable energy resource equipment manufacturing facility must provide sufficient information to allow the Director to find that the facility is used exclusively for a renewable energy resource facility, including clearly describing the specific characteristics of the equipment, machinery or other products that demonstrate why such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes.

(5) Standards for Determining What Constitutes a Single Renewable Energy Resource Equipment Manufacturing Facility: In determining whether to grant a BETC for a renewable energy resource manufacturing facility, the director will consider the criteria established in OAR 330-090-0120(6)(C).

(6) Standards for Distinct Facility Characteristics: A facility must have distinct essential characteristics to be considered a facility separate from another facility subject to the facility cost limitation imposed OAR 330-090-0150(1)(a). Facilities that are not clearly distinguishable will be considered as one facility subject to the facility cost limitation.

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(7) If an applicant is applying for a preliminary certification for a facility qualifying under the same specific facility definition under OAR 330-090-0110 as any other facility for which the applicant has received preliminary or final certification, the applicant must demonstrate that the facility has distinct essential characteristics or the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150 (1)(a), except as otherwise provided in OAR 330-090-0120(4)(B) and (4)(b). In its application, the applicant must specifically address each of the essential characteristics criteria cited for the facility and clearly state the basis on which it believes the facilities have distinct essential characteristics. The applicant may also cite any other essential characteristics it believes are applicable and clearly state the basis on which it believes the facilities have distinct essential characteristics.

(a) Except as provided in subsection (B) of this section, criteria to be considered in determining essential characteristics of a renewable energy resource facility include but are not limited to:

(A) What is the purpose or end-use application of the facilities and how are those purposes or end-use applications distinct?

(B) What are the applicable permits, licenses or site certificates and how are they distinct?

(C) Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?

(D) How, when, and from whom was the generating equipment procured for the facility and how is the procurement distinct?

(E) What are the net metering or power purchase agreements and how are those agreements distinct?

(F) Where and how will the facilities connect to the grid and how will that connection be distinct?

(G) What will be the applicable transmission agreements and how will those agreements be distinct?

(H) What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?

(I) What will be the operation, including dispatch if applicable, and maintenance agreements or arrangements and how are those agreements or arrangements distinct?

(J) What will be the financing arrangements and how are the financing arrangements distinct?

(b) For renewable energy facilities that qualify as small power production facilities under Oregon Public Utility Commission docket number UM1129 definition of separate site, each small power production facility may qualify for a Business Energy Tax Credit based on the following criteria:

(A) Each applicant will only be allowed to take the applicant's proportion of any shared interconnection infrastructure.

(B) Each applicant must identify other entities that share the applicant's interconnection infrastructure.

(c) Essential characteristics of a renewable energy resource equipment manufacturing facility include but are not limited to the following criteria:

(A) How is the land, structures, buildings, installations, excavations, machinery, equipment or devices that have been subject in whole or in part to the facility cost limitation of OAR 330-090-0150 (1)(a)(A) distinct from a facility that has received preliminary or final certification?

(B) What is the purpose or end-use product of the facilities and how are those purposes or end-use applications distinct?

(C) What are the applicable permits, licenses or site certificates and how are those permits, licenses or site certificates distinct?

(D) Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?

(E) What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?

(F) What are the operating characteristics and will the facilities have distinct operating characteristics?

(G) What will be the financing arrangements and how are the financing arrangements distinct?

(d) Criteria to be considered in determining the essential characteristics of all other facilities include but are not limited to:

(A) What is the purpose or end-use application of the facilities and how are those purposes or end-use applications distinct?

(B) What are the applicable permits, licenses or site certificates and how are they distinct?

(C) Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?

(D) How, when and from whom was the generating equipment procured for the facility and how is the procurement distinct?

(E) What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?

(F) What will be the operation and maintenance agreements or arrangements and how are those agreements or arrangements distinct?

(G) What will be the financing arrangements and how are the financing arrangements distinct?

(e) If facilities will be completed in phases over time, the applicant must demonstrate that the facilities would independently qualify as an eligible facility and that the facilities are not interdependent in purpose or the manner in which they will be owned, financed, constructed, operated, or maintained or the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150(1)(a).

(f) If the applicant does not demonstrate that the facilities are clearly and substantively distinguishable, the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150(1)(a), except as otherwise provided in OAR 330-090-0120(4)(b).

(8) Standards When Replacing a Facility: If a facility is replaced or reconstructed and a preliminary certification is filed for a tax credit on the replacement or reconstructed facility, the tax credit for the replacement or reconstructed facility may be reduced by the amount of the original tax credit remaining for the original facility.

(9) Eligible Costs of a Renewable Energy Resource Equipment Manufacturing Facility: A BETC may be granted based on the eligible costs of a facility that is used to manufacture equipment, machinery or other products that will be used exclusively for renewable energy resource facilities. Subject to the facility cost limitations of OAR 330-090-0150(1)(a)(C) and the provisions of OAR 330-090-0120(5), eligible costs for a renewable energy resource equipment manufacturing facility include any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices, necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used to manufacture the equipment, machinery or other products that will be used exclusively for renewable energy resource facilities.

(a) Eligible costs do not include any costs of any land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices that have been subject in whole or in part to the facility cost limitation of OAR 330-090-0150(1)(a)(A) if such costs would exceed that cost limitation.

(b) Eligible costs do not include costs of a facility that is used to manufacture equipment, machinery or other products not used exclusively for renewable energy resource facilities.

(c) An application for a renewable energy resource equipment manufacturing facility must demonstrate compliance with these provisions to be accepted, including clearly describing the specific characteristics of the equipment, machinery or other products that demonstrate why such equipment, machinery or other products will be used exclusively for renewable energy resource facilities and not for other commercial purposes and therefore why the costs of such of such equipment, machinery or other products are eligible costs.

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 4-1991, f. & cert. ef. 12-3-91; 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 1-2005, f. 12-30-05, cert. ef. 1-1-06; 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

330-090-0130

How ODOE Handles a BETC

(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.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must notify ODOE in writing.

(c) A facility owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(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.

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(2) Preliminary Certification Preapproval: The Director may preapprove a preliminary certification for facilities that ODOE has reviewed and determined to be otherwise qualified under these rules. Such facilities may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a facility owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Pre-qualified hybrid-electric vehicles.

(c) Facilities that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on a facility begins.

(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. If it is not complete, the incomplete application will not be accepted and will be returned to the applicant. The applicant may resubmit a completed application.

(b) Within 120 days after a completed application is filed, the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (c), if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. 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 330-090-0130(13).

(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 final 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.

(c) 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 information 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 will not be revised if conditions under ORS 469.200(2) change.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the facility.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(d) Facts that show the proposed use is a facility under these rules.

(e) Facility start and finish dates.

(f) Facts that describe the facility, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the facility.

(h) The applicant's signature on the application attesting that it is correct.

(i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before facility development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.

(A) For a solar energy facility: A sun chart and solar insolation data for the site.

(B) For a wind energy facility:

(i) The average monthly wind speed for 12 consecutive months at the proposed site. Measure wind speed at or as close as practically feasible to the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or

(ii) Measure wind speed at two heights for 12 consecutive months, the lowest one at least 10 meters above ground and estimate the wind speed at hub or equator height; or

(iii) In the event of less than one year's measurements at the proposed site, include the months of on-site measurements and supplement these data with estimated average monthly wind speeds at or near the proposed site to complete the 12 consecutive month data set. Such estimated data should be obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology; or

(iv) The estimated average monthly wind speed for 12 consecutive months at or near the proposed site obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.

(v) In the event that estimated wind resource data are used as described under section (3) and (4) above, the project owner shall provide to ODOE not later than 14 months after the start-up date, one year of actual monthly energy production data and, if available, actual monthly average wind speed data of the wind energy facility's site.

(C) For a geothermal energy facility (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power facility: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy needs.

(F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.

(G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 g/hr for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).

(k) The payment required by OAR 330-090-0150(2).

(l) For wind facilities:

(A) Equipment must meet the following:

(i) Each model of the system must demonstrate reliable operation of that model of equipment and show monthly data of average energy produced (kWh) and average wind speed for one consecutive year at a site with average annual wind speeds of at least 12 mph; or

(ii) Proof that the wind system model is listed on the official list of Qualified Wind Generators published by the Energy Trust of Oregon, the California Energy Commission, or the New York State Energy Research and Development Authority (NYSERDA) in effect as of March 20, 2008; or

(iii) The manufacturer's power curve, the estimated annual energy production based on the site's wind speed data, and the manufacturer's performance guarantees (on-line availability and power curve).

(B) The Oregon Department of Energy reserves the right to deny eligibility for any wind system for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented; lack of manufacturing support for maintenance, warranties, etc., and insufficient experience with generator.

(m) For alternative fuel vehicle facilities: proof that the vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

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(n) For alternative fuel vehicle facilities: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling station facilities: a description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) For transportation facilities: required documentation for each category specified by OAR 330-090-0110(62) (a through n).

(q) For a waste-to-energy renewable energy resource facility that meets the definition of waste stream, includes the percentage of waste stream product to be recovered and a remediation plan for emissions and byproducts.

(r) For a renewable energy resource equipment manufacturing facility:

(A) The applicant shall demonstrate that they can meet ORS 469.197(4)(c) through (f) by:

(i) Describing the minimum level of direct employment that will be provided by the facility during each of the tax years in which the tax credit will be claimed and by describing the anticipated average annual direct employment during each of those years, including the number of average hourly and annual wages of employees by employment classifications by geographic location. The applicant must also describe actions it will take to achieve cultural diversity in its work force.

(ii) Demonstrating its financial ability to construct and operate the proposed facility through documentation such as independent credit ratings; credit references, including letters from banks or other financial institutions attesting to the applicant's credit worthiness; and other documentation demonstrating the applicant's financial viability.

(iii) Demonstrating that the facility will achieve long-term success by documenting the qualifications, capabilities and experience of the applicant in the construction and operation of such facilities, the long-term commercial and technical viability of the renewable energy resources manufacturing equipment and the renewable energy resource facilities for which the equipment is produced.

(iv) Certifying that allowance of the tax credit is integral to the decision to expand or locate the facility in Oregon.

(B) In considering such applications, the Director may consult with other state agencies and will consult with the Oregon Economic & Community Development Department.

(C) The Director must find that:

(i) The applicant has demonstrated that it has a reasonable likelihood of achieving the minimum level of employment proposed and that such employment will contribute public benefit, based on the number of average hourly and annual wages of employees including benefits by employment classifications by geographic location, and actions to achieve cultural diversity in its workforce.

(ii) The applicant has a reasonable likelihood of being financially viable based on its credit ratings and references from banks and financial institutions attesting to its credit worthiness.

(iii) The applicant has the organizational expertise as demonstrated by qualifications and experience to construct and operate the proposed facility;

(iv) The renewable energy resource equipment and the renewable energy resource facilities for which the equipment is produced have the commercial and technical viability to have the reasonable likelihood to achieve long-term success.

(v) The facility will contribute to a diversified portfolio of renewable energy resource equipment manufacturing facilities.

(vi) The applicant has certified that allowance of the tax credit is integral to the decision to expand or locate the facility in Oregon.

(s) Other information and assurances the Director requires to find that a facility complies with these rules.

(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 preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with OAR 330-090-0120; and

(B) Special circumstances make application for preliminary certification before facility start up a hardship. 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.

(6) How Preliminary Certification Can be Revoked: The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A facility, other than a renewable energy resource equipment manufacturing facility, is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved. A renewable energy equipment manufacturing facility is not started before 1,825 days (5 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before facility development starts.

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) Changes Between Preliminary Certification and Final Certification: To change a facility that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, facility design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director will decide if the changed facility complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) 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.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-through Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, 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 tax credit may not be transferred until the facility owner has received the pass-through payment in full and notified ODOE.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the facility is complete.

(a) Within 30 days after a final certification application 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. If it is not complete, the incomplete application will not be accepted and will be returned to the applicant and the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the preliminary certification. This contingency does not include any costs determined ineligible under OAR 330-090-0110(17)(b). For a Research, Development & Demonstration facility, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within six months after the facility begins to operate; and, if needed to make the facility work better. Also, the final certification may state any conditions that must be met in order to retain tax credit benefits or the tax credit may be subject to revocation.

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the

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applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The facility complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the facility remains in accord with local, state, and federal laws. This includes local land use laws.

(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 based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner; or

(ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19); or

(iii) For a sustainable building 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 BETC Technical Requirements and method of calculation will be accepted in lieu of facility cost receipts.

(C) Proof the facility is completed.

(D) If the facility is leased, a copy of the lease.

(E) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Director finds are needed to assure a facility complies with these rules. (10) Changes After Final Certification:

(a) The applicant must inform the Director in writing within 60 days and before another tax credit is claimed if a facility that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased facility has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a facility may apply for final certification. The request must comply with OAR 330-090-0130(9). If it complies, the Director will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) Basis for Revoking Tax Credit Benefits: For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a facility owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may not be revoked.

(a) The applicant does not send the Director written notice that:

(A) The facility has been moved; or

(B) Title to the facility has been conveyed; or

(C) The facility is not operating; or

(D) The term of a leased facility has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the facility in a reasonable time after the Director requests it.

(d) Other changes in the facility or its owner or lessor that violate these rules in the years for which the credit is claimed.

(e) The applicant does not conform to the conditions established in the final certification.

(12) Loss of Tax Credit Benefits: If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the facility owner may not claim tax credits for the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the facility owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full net present value, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(c) If a final certification issued for a renewable energy resource equipment manufacturing facility is revoked, the Director shall notify the Oregon Department of Revenue which will proceed to collect:

(A) From the applicant or any successor in interest to the business interests of that person, in the case of a tax credit that has not been transferred to a pass-through partner, the full amount of the tax credit claimed. Unclaimed credits shall be forfeited.

(B) From the applicant or any successor in interest to the business interests of that person, in the case of a tax credit that has been transferred to pass-through partners, the full amount of the tax credit. Pass-through partners may continue to claim all remaining amounts of the tax credit issued to them.

(13) Request for Reconsideration: An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) Inspections: After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the facility. ODOE will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

(15) Public Access to Program Records:

(a) ODOE will not disclose data about a facility, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour

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 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

330-090-0150

Budget Limits and Payments for BETC

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a BETC preliminary certification will not be issued for more than:

(A) \$20 million in maximum eligible facility costs for a renewable energy resource facility or high efficiency combined heat and power facility;

(B) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home Business Energy Tax Credits subject to subsection (b).

(C) \$40 million in maximum eligible facility costs for a renewable energy resource equipment manufacturing facility.

(b) A final certification for a Business Energy Tax Credit will not be issued for more than 50 percent of the cost not to exceed \$9,000 for a homebuilder-installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home.

(2) Return of Review Charge for Returned Incomplete Applications: If under OAR 330-090-0130, ODOE does not accept and returns an incomplete application for preliminary certification, ODOE will also return the review charge submitted by the applicant.

(3) Cost of Reviews: ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification. For all facilities except Sustainable Building Facilities, renewable energy resource equipment manufacturing facilities, or facilities qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or \$30 whichever is greater. The maximum payment amount is \$35,000. The 0.0060 payment rate up to \$35,000 will be applied to all facilities with eli-

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gible costs of \$1 million and more that were received on or after January 1, 2007. For facilities with eligible costs of less than \$1 million, the 0.0060 payment rate up to \$35,000 will be applied to applications received on or after December 1, 2007. For renewable energy resource equipment manufacturing facility applications received on or after January 1, 2007, but before the effective date of these rules, the payment will be 0.0060 multiplied by the facility eligible costs requested in the preliminary certification application, or a request to amend the preliminary certification, not to exceed a payment amount of \$35,000. For renewable energy resource equipment manufacturing facility applications received on or after the effective date of these rules, the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, not to exceed a payment amount of \$75,000. For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Only refunds that are \$10 or greater will be issued. Amounts under \$10 will not be refunded. Conditions for which a refund may be granted are:

(A) Denial of an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.

(d) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for facilities that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

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 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 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

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Department of Environmental Quality Chapter 340

Rule Caption: This proposal increases WPCF Onsite Fees by 3% and 5% and the Onsite application surcharge by \$20 and makes minor housekeeping changes.

Adm. Order No.: DEQ 7-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 340-071-0140, 340-071-0220

Subject: This rulemaking contains three separate water quality permit fee increases and a surcharge. DEQ proposes to increase fees for all National Pollution Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permits by 8% to address increased water quality permit program fees and to support 2.5 new positions approved by the 2007 Legislature. Suction dredge permits covered by General Permit 700-PM and WPCF-Onsite permits are not included in the increase. DEQ also proposes to increase NPDES stormwater permit fees by 82% to support 14 new stormwater program positions approved by the 2007 Legislature.

DEQ proposes to implement a surcharge on 52 wastewater treatment plants that have an average dry weather design flow capacity

of one million gallons per day or more. The surcharge will support two limited-duration positions to perform work as outlined in Senate Bill 737. Senate Bill 737 requires DEQ to create a list of priority persistent bioaccumulative toxics that have a documented effect on human health, wildlife and aquatic life.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-071-0140

Onsite System Fees

(1) This rule establishes the fees for site evaluations, permits, reports, variances, licenses, and other services the department provides under this division.

(2) Site evaluation and existing system evaluation fees are listed in Table 9A.

(3) Permitting fees for systems not subject to WPCF permits are listed in Table 9B and Table 9C.

(4) WPCF permit fees. Fees in this section apply to WPCF permits issued pursuant to OAR 340-071-0162. WPCF permit fees are listed in Table 9D.

(5) Innovative or Alternative Technology or Material Review fees are listed in Table 9F.

(6) Material Plan Review fees are listed in Table 9F.

(7) Sewage Disposal Service License and Truck Inspection fees are listed in Table 9E.

(8) Contract county fee schedules.

(a) Each county having an agreement with the department under ORS 454.725 must adopt a fee schedule for services rendered and permits issued. The county fee schedule may not include the department's surcharge established in section (9) of this rule unless identified as a department surcharge.

(b) A copy of the fee schedule and any subsequent amendments to the schedule must be submitted to the department.

(c) Fees may not exceed actual costs for efficiently conducted services.

(9) Department surcharge.

(a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, the department and contract counties must levy a surcharge for each site evaluation, report permit, and other activity for which an application is required in this division. The surcharge fee is listed in Table 9F. This surcharge does not apply to sewage disposal service license applications, pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers.

(b) Proceeds from surcharges collected by the department and contract counties must be accounted for separately. Each contract county must forward the proceeds to the department in accordance with its agreement with the department.

(10) Refunds. The department may refund all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.

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

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 454.745, 468.065 & 468B.050

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 13-1986, f. & ef. 6-18-86; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 9-2001(Temp), f. & cert. ef. 7-16-01 thru 12-28-01; DEQ 14-2001, f. & cert. ef. 12-26-01; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08

340-071-0220

Standard Subsurface Systems

(1) Criteria For standard subsurface systems. Each site must meet all of the conditions in this section to be approved for a standard subsurface system.

(a) Effective soil depth must extend 30 inches or more below the ground surface as shown in Table 3. A minimum 6-inch separation must be maintained between the layer that limits effective soil depth and the bottom of the absorption facility.

(b) Water table levels must be predicted using standards in OAR 340-071-0130(23).

(A) The permanent water table must be at least 4 feet below the bottom of the absorption facility, except in defined geographic areas where the department has determined through a groundwater study that less separation will not degrade groundwater or threaten public health. In these exception areas, the permanent water table must be at least 24 inches below the ground surface.

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(B) A temporary water table must be 24 inches or more below the ground surface. An absorption facility may not be installed deeper than the top of the temporary water table.

(C) A groundwater interceptor may be used to intercept or drain water from an absorption area on sites with adequate slope to permit proper drainage. An agent may require a demonstration that the site can be dewatered before issuing a site evaluation report approving the site. Where required, groundwater interceptors are an integral part of the system but do not need to meet setback requirements to property lines, wells, streams, lakes, ponds, or other surface water bodies that are required for the wastewater absorption area.

(c) Except as provided in subsection (d) of this section, soil with rapid or very rapid permeability must be 36 inches or more below the ground surface. A minimum 18-inch separation must be maintained between soil with rapid or very rapid permeability and the bottom of absorption trenches.

(d) Sites may be approved with no separation between the bottom of absorption trenches and soil with rapid or very rapid permeability as defined in OAR 340-071-0100(151)(a) and (b) and absorption trenches may be placed into such soil if any of the following conditions occur.

(A) A confining layer occurs between the bottom of absorption trenches and the groundwater table and a minimum 6-inch separation is maintained between the bottom of absorption trenches and the top of the confining layer.

(B) A layer of nongravely (less than 15 percent gravel) soil with sandy loam or finer texture at least 18 inches thick occurs between the bottom of the absorption trenches and the groundwater table.

(C) The projected daily sewage flow does not exceed a loading rate of 450 gallons per acre per day.

(e) Slopes do not exceed 30 percent or the slope/effective soil depth relationship set forth in Table 3.

(f) The site has not been filled or the soil has not been modified in a way that would in the opinion of the agent, adversely affect functioning of the system.

(g) The site is not on an unstable land form that might adversely affect operation of the system.

(h) The site of the initial and replacement absorption facility is not covered by asphalt or concrete or subject to vehicular traffic, livestock, or other activity that would adversely affect the soil.

(i) The site of the initial and replacement absorption facility will not be subjected to excessive saturation from artificial drainage of ground surfaces, driveways, roads, roof drains, or other circumstances.

(j) Setbacks in Table 1 except as modified by this subsection can be met.

(A) Surface waters setbacks. Setback from streams or other surface waters must be measured from bank drop-off or mean yearly high water mark, whichever provides the greatest separation distance.

(B) Lots created before May 1, 1973. For lots or parcels legally created before May 1, 1973, the agent may approve installation of a standard or alternative system with a setback from surface waters of less than 100 feet but not less than 50 feet if all other applicable provisions of this rule can be met.

(C) Water lines and sewer lines. Effluent sewer and water line piping constructed of materials that are approved for use within a building in the 2000 Edition of the Oregon State Plumbing Specialty Code may be run in the same trench or may cross. Where the effluent sewer pipe material is not approved for use in a building, it may not be run or laid in the same trench as water pipe unless:

(i) The bottom of the water pipe at all points is set at least 12 inches above the top of the sewer pipe; and

(ii) The water pipe is placed on a solid shelf excavated at one side of the common trench with a minimum, clear, horizontal distance of at least 12 inches from the sewer pipe.

(D) Septic tank setbacks. The agent must encourage the placement of septic tanks and other treatment units as close as feasible to the minimum separation from the building foundation to minimize clogging of the building sewer.

(E) Pressure transport pipe setback to well. Notwithstanding the setback distance in Table 1, the agent may allow the separation distance between a pressure transport pipe and a well to be less than 50 feet but no less than 25 feet when:

(i) The pressure transport pipe is PVC Sch. 40 or heavier pressure-rated piping meeting ASTM Specification D-2241;

(ii) The pressure transport pipe is placed within a larger diameter PVC or ABS Sch. 40 or heavier encasement pipe, with the pipe ends located at least 50 feet away from the well; and

(iii) All pipe joints in the pressure transport pipe and encasement pipe are solvent-welded.

(2) Criteria for sizing absorption fields. Absorption fields must be designed and sized based on the criteria in this section.

(a) Table 2, specifying quantities of sewage flows, or other information the agent determines is reliable with the following exception. A system

must be sized on the basis of 300 gallons sewage flow per day plus 75 gallons per day for the third bedroom when the system:

(A) Is proposed to serve a single family dwelling on a lot of record created before March 1, 1978, that is too small to accommodate a system sized for a daily sewage flow of 450 gallons; or

(B) Serves specifically planned developments with living units of three or fewer bedrooms and deed restrictions prohibit an increase in the number of bedrooms.

(b) Table 4, specifying the minimum length of absorption trenches based on soil texture and effective soil depth.

(c) Table 5, specifying the minimum length of absorption trenches based on soil texture and depth to temporary water.

(d) Strength of the wastewater. If the strength of the wastewater exceeds the maximum limits for residential strength wastewater or the contents of the wastewater are atypical of residential strength wastewater or pose a threat to groundwater, public health, or the environment, the wastewater must be pretreated to acceptable levels before being discharged into a standard or alternative system. Systems requiring pretreatment require a WPCF permit for construction and operation.

(3) Septic tank.

(a) Liquid capacity.

(A) The quantity of daily sewage flow projected for a facility must be estimated from Table 2. The agent must determine the projected daily sewage flow for establishments not listed in Table 2.

(B) A septic tank that serves a commercial facility must have a liquid capacity of at least two times the projected daily sewage flow unless otherwise authorized by the agent. In all cases the capacity must be at least 1,000 gallons.

(C) The capacity of a septic tank that serves a single family dwelling must be based on the number of bedrooms in the dwelling. For a dwelling with 4 or fewer bedrooms, the tank capacity must be at least 1,000 gallons. Septic tank capacity must be at least 1,500 gallons for dwellings with more than 4 bedrooms.

(D) The agent may require a larger capacity than specified in this subsection as needed for special or unique waste characteristics, such as flow patterns, volumes, waste strength, or facility operation.

(b) Installation requirements.

(A) Septic tanks must be installed on a level, stable base that will not settle.

(B) Septic tanks located in high groundwater area must be weighted or provided with an anti buoyancy device to prevent flotation in accordance with the manufacturer's instructions.

(C) Tanks must be installed with at least one watertight riser extending to the ground surface or above. The riser must have a minimum diameter of 20 inches when the soil cover above the tank does not exceed 36 inches. The riser must have a minimum diameter of 30 inches when the soil cover above the tank exceeds 36 inches or when the tank capacity exceeds 3,000 gallons. A gasketed cover must be provided and securely fastened or weighted to prevent unauthorized access.

(D) Tanks must be installed in a location that provides access for maintenance.

(E) Where practicable, the sewage flow from an establishment must be consolidated into one septic tank.

(F) The agent may allow a removable plug to be placed in the top of a septic tank inlet sanitary tee if the septic tank discharges directly into a gravity-fed absorption facility.

(G) A demonstration of watertightness is required for all tanks after installation in accordance with OAR 340-073-0025.

(H) Unless otherwise allowed by the agent, an effluent filter meeting the requirements of OAR 340-073-0056 must be installed at the septic tank outlet if a tank serves a commercial facility. A service access riser and cover meeting the requirements of 340-071-0220(3)(b)(C) must be placed above the effluent filter.

(c) Construction. Tank construction must comply with minimum standards in OAR chapter 340, division 073, unless otherwise authorized in writing by the department.

(d) Multi-compartment tank requirement.

(A) With the exception in paragraph (B) of this subsection, if a septic tank is preceded by a sewage ejector pump, the tank must be manufactured as a multi-compartment tank in accordance with requirements in this division and OAR chapter 340, division 073. An effluent filter must be installed unless the agent allows other methods with equal or better performance in preventing the passage of suspended solids to the drainfield.

(B) If the sewage ejector pump preceding the septic tank at a single family residence receives wastewater from only a clothes washing machine and a sink, a single-compartment septic tank may be used in lieu of a multi-compartment septic tank. The tank must meet the minimum capacity requirement in subsection (a) of this section, and an effluent filter must be installed in the tank's outlet tee fitting. Alternatively, the agent may allow the filter to be placed in a separate vault and riser located just outside the septic tank or may authorize other alternatives as appropriate.

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(4) Distribution techniques. Absorption trenches must be constructed according to one of the methods in this section.

(a) Gravity-fed equal distribution (including loop).

(A) Equal distribution must be used on generally level ground. All trenches and piping must be level within a tolerance of plus or minus 1 inch. All lateral piping must be at the same elevation.

(B) A pressure-operated hydrosplitter may be used to achieve equal distribution.

(C) To determine the total useable area of a looped soil absorption facility, the agent must add the sum of the lengths of the parallel absorption trenches and the lengths of up to two absorption trenches intersecting the parallel trenches.

(b) Serial distribution. Serial distribution is generally used on sloping ground. Each trench must be level within a tolerance of plus or minus 1 inch. Serial distribution may be a combination of equal distribution and serial distribution.

(c) Pressurized distribution systems. Pressurized distribution must satisfy the requirements in OAR 340-071-0275.

(5) Distribution boxes and drop boxes.

(a) Construction. Construction of distribution boxes and drop boxes must comply with standards in OAR 340-073-0035 and 340-073-0040.

(b) Foundation. All distribution boxes and drop boxes must be bedded on a stable, level base.

(c) In all gravity distribution techniques, the connection of the effluent piping to the distribution piping must include at least one distribution or drop box or other device acceptable to the agent as a means for locating and monitoring the absorption field.

(6) Dosing tanks and dosing septic tanks.

(a) Tank construction must comply with the standards in OAR chapter 340, division 073 unless otherwise authorized in writing by the department.

(b) The tank must be installed on a stable, level base at a location that provides access for maintenance.

(c) The tank must be provided with at least one watertight service access riser extending to the ground surface or above. The riser must have a minimum diameter of 20 inches when the soil cover above the tank does not exceed 36 inches. The riser must have a minimum diameter of 30 inches when the soil cover above the tank exceeds 36 inches. A gasketed cover must be securely fastened or weighted to prevent unauthorized access.

(d) A tank located in a high groundwater area must be weighted or provided with an anti buoyancy device to prevent flotation in accordance with the tank manufacturer's instructions.

(7) Absorption trenches.

(a) Absorption trenches must be constructed in accordance with the standards in this section unless otherwise authorized in this division.

(A) Minimum bottom width of trench — 24 inches.

(B) Minimum depth of trench:

(i) Equal or looped distribution — 18 inches.

(ii) Serial distribution — 24 inches.

(iii) Pressure distribution — 18 inches.

(C) Maximum depth of trench — 36 inches.

(D) Maximum length of an individual trench — 150 linear feet, unless otherwise authorized in writing by the agent.

(E) Minimum distance of undisturbed earth between trenches — 8 feet.

(b) The bottom of the trench must be level within a tolerance of plus or minus 1 inch end to end and level from side to side.

(c) When the sidewall within a trench has been smeared or compacted, sidewalls must be raked to ensure permeability.

(d) Trenches must be constructed to prevent septic tank effluent from flowing backwards from the distribution pipe to undermine the distribution box, the septic tank, or any portion of the distribution unit.

(e) Drain media must extend the full width and length of the trench to a depth of at least 12 inches with at least 6 inches of drain media under the distribution pipe and at least 2 inches over the distribution pipe.

(f) Before backfilling the trench, the drain media must be covered with filter fabric, untreated building paper, or other material approved by the agent.

(g) If trenches are installed in sandy loam or coarser soils, filter fabric or other nondegradable material approved by the agent must be used to cover the drain media.

(8) Trench backfill.

(a) The installer must backfill the system. Backfill must be carefully placed to prevent damage to the system.

(b) A minimum of 6 inches of backfill is required; in serial systems 12 inches is required.

(c) Backfill must be free of large stones, frozen clumps of earth, masonry, stumps, waste construction materials, or other materials that could damage the system.

(9) Header pipe. Header pipe must be watertight, have a minimum diameter of 3 inches, and be bedded on undisturbed earth. Where distribu-

tion boxes or drop boxes are used, the header pipe between the box and the distribution pipe must be at least 4 feet in length and be installed level.

(10) Distribution pipe.

(a) Distribution pipes must have a minimum diameter of 3 inches.

(b) Each disposal trench must have distribution piping that is centered in the trench and laid level within a tolerance of plus or minus 1 inch.

(c) Distribution pipe must comply with standards in OAR 340-073-0060(4).

(d) All perforated pipe must be installed with centerline markings up.

(11) Effluent sewer. The effluent sewer must extend at least 5 feet beyond the septic tank before connecting to the distribution unit. It must be installed with a minimum fall of 4 inches per 100 feet and at least 2 inches of fall from one end of the pipe to the other. In addition, there must be a minimum difference of 8 inches between the invert of the septic tank outlet and either the invert of the header to the distribution pipe of the highest lateral in a serial distribution field or the invert of the header pipe to the distribution pipes of an equal distribution absorption field. A minimum 18-gauge, green-jacketed tracer wire or green color-coded metallic tape must be placed above the effluent sewer pipe.

(12) Curtain drain construction. Unless otherwise authorized by the agent, curtain drains must comply with the following requirements.

(a) Ground slope must be at least 3 percent, or other landform features such as an escarpment must allow for effective drainage.

(b) The curtain drain must extend at least 6 inches into the layer that limits effective soil depth or to a depth adequate to effectively dewater the site.

(c) Trench width must be a minimum of 12 inches.

(d) Perforated pipe must have a minimum diameter of 4 inches and must meet the requirements in OAR 340-073-0060(4).

(e) Perforated pipe must be installed at least 2 inches above the bottom and along the full length of the trench and must be covered by a minimum of 10 inches of drain media.

(f) The perforated pipe must be installed on a uniform grade of 0.2 to 0.4 feet of fall per 100 feet.

(g) The curtain drain must be filled with drain media to within 12 inches of the ground surface.

(h) Outlet pipe must be rigid, smooth-wall, solid PVC pipe meeting or exceeding ASTM Standard D-3034 with a minimum diameter of 4 inches. A flap gate or rodent guard must be installed.

(i) Filter fabric must be placed over the drain media.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08

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Rule Caption: This rulemaking increases water quality permit fees and establishes a surcharge on certain municipalities.

Adm. Order No.: DEQ 8-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 340-045-0075

Subject: The Onsite System Fee Increase rulemaking increased two separate water quality permit fees, increased a surcharge, and made two housekeeping changes in Division 71.

The DEQ water quality permit program needs a 3% fee revenue increase to help cover anticipated increased salary and benefit costs and a 5% increase to support 2.5 new positions in the water quality program. This rulemaking increased Water Pollution Control Facility Onsite permit fees by 3% and 5% to cover a portion of these costs in the water quality program. Other water quality permit fees in division 045 have been increased under a separate rulemaking.

Since 2001, the onsite program has been reduced by 4.60 FTE. This reduction in FTE has resulted in a decline in DEQ's services such as conducting program reviews of the contract county programs. This rulemaking increased the surcharge by \$20 to allow DEQ to add additional staff in order to conduct regularly scheduled program reviews of contract county programs and ensure consistent implementation of the onsite program across the state.

This rulemaking changes the structure of the fee schedule from outline format to table format. The fees are presented in Tables 9A to 9F. The changes to the structure of the fee schedule will make it

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easier for the regulated community to determine what fee is required for their application.

This rulemaking strikes the words “or Structure” from section 11 of Table 1 of Division 71. Structure is not defined in Division 71 but is defined by Oregon Building Codes Department as that which is built or constructed. Striking the words “or Structure” is needed to clarify the intent of the rule and give appropriate flexibility to our agents in the field in regards to onsite system setbacks from certain structures.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-045-0075

Permit Fee Schedule

(1) The fee schedule for onsite sewage disposal system permits, including WPCF permits, is found in OAR chapter 340, division 071.

(2) The Department has established fees for various industrial, domestic and general permit categories. The industrial and domestic permit categories and fees are listed in Tables 70B and 70C. The general permit categories are defined in OAR 340-045-0033 and the fees are listed in Table 70G.

(3) The Department must consider the following criteria when classifying a facility for determining applicable fees. For industrial sources that discharge to surface waters, discharge flowrate refers to the system design capacity. For industrial sources that do not discharge to surface waters, discharge flow refers to the total annual flow divided by 365:

(a) Tier 1 industry. A facility is classified as a Tier 1 industry if the facility:

- (A) Discharges at a flowrate that is greater than or equal to 1 mgd; or
- (B) Discharges large biochemical oxygen demand loads; or
- (C) Is a large metals facility; or
- (D) Has significant toxic discharges; or
- (E) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly; or
- (F) Needs special regulatory control, as determined by the Department.

(b) Tier 1 domestic facility. A facility is classified as a Tier 1 domestic facility if the facility:

- (A) Has a dry weather design flow of 1 mgd or greater; or
- (B) Serves an industry that can have a significant impact on the treatment system.

(c) Tier 2 industry or domestic facility: does not meet Tier 1 qualifying factors.

(4) New Permit Application Fee. Unless waived by this rule, the applicable new permit application fee listed in Table 70A, 70C or 70G (available on the Department's website or upon request) must be submitted with each application. The amount of the fee is based on the facility category and type of permit (e.g., individual vs. general).

(5) Permit Modification Fee. Permit modification fees are listed in Tables 70A and 70C (available on the Department's website or upon request). They vary with the type of permit, the type of modification and the timing of modification as follows:

(a) Modification at time of permit renewal:

(A) Major Modification — involves an increase in effluent limitations or any other change that involves significant analysis by the Department;

(B) Minor Modification — does not involve significant analysis by the Department.

(b) Modification prior to permit renewal:

(A) Major Modification — involves an increase in effluent limitations or any other change that involves significant analysis by the Department. A permittee requesting a significant modification to their permit may be required by the Department to enter into an agreement to pay for these services according to ORS 468.073. ORS 468.073 allows the Department “to expedite or enhance a regulatory process by contracting for services, hiring additional staff or covering costs of activities not otherwise provided during the ordinary course of Department business.”

(B) Minor Modification — does not involve significant analysis by the Department.

(6) Annual fees. Applicable annual fees for General and Industrial permit holders may be found in Tables 70G and 70B (available on the Department's website or upon request). Annual fees for domestic sources may also be found in Table 70C (available on the Department's website or upon request), and consist of the following:

(a) Base annual fee. This is based on the type of treatment system and the dry weather design flow;

(b) Population-based fee. A permit holder with treatment systems other than Type F (septage alkaline stabilization facilities) must pay a population-based fee. The applicable fee may be found in Table 70D (available on the Department's website or upon request);

(c) Pretreatment fee. A source required by the Department to administer a pretreatment program pursuant to federal pretreatment program regulations (40CFR, Part 403; January 29, 1981 and amendments thereto) must pay an additional annual fee plus a fee for each significant industrial user specified in their annual report for the previous year. The applicable fee may be found in Table 70E (available on the Department's website or upon request).

(7) Technical Activities Fee. Technical activity fees are listed in Tables 70F and 70H (available on the Department's website or upon request). They are categorized as follows:

(a) All Permits. A permittee must pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and re-submittals of engineering plans and specifications or for facilities plans, design studies, reports, change orders, or inspections;

(b) General Permits. A permittee must pay the technical activity fee shown in Table 70H (available on the Department's website or upon request) when the following activities are required for application review:

(A) Disposal system plan review;

(B) Site inspection and evaluation.

(8) For permits administered by the Oregon Department of Agriculture, the following fees are applicable until superseded by a fee schedule established by the Oregon Department of Agriculture:

(a) WPCF and NPDES General Permits #800 for Confined Animal Feeding Operations Filing Fee — \$50;

(b) Individual Permits:

(A) Filing Fee — \$50;

(B) New Applications — \$6,280;

(C) Permit Renewals (including request for effluent limit modifications) — \$3,140;

(D) Permit Renewals (without request for effluent limit modifications) — \$1,416;

(E) Permit Modifications (involving increase in effluent limit modifications) — \$3,140;

(F) Permit Modifications (not involving an increase in effluent limitations) — \$500;

(G) Annual Compliance Determination Fee for dairies and other confined feeding operations — \$705;

(H) Annual Compliance Determination Fee for facilities not elsewhere classified with disposal of process wastewater — \$1,885;

(I) Annual Compliance Determination Fee for facilities not elsewhere classified that dispose of non-process wastewater (e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds) — \$1,180.

(c) Annual Compliance Determination Fee for facilities that dispose of wastewater only by evaporation from watertight ponds or basins — \$705.

(9) A surcharge in the amount listed below is imposed on municipalities that are permittees as defined in 2007 Oregon Laws chapter 696, section 2. The surcharge is imposed to defray the cost of conducting and administering the study of persistent pollutants discharged in the State of Oregon required under 2007 Oregon Laws chapter 696, section 3. A permittee subject to the surcharge must pay one half of the surcharge on or before July 15, 2008 and the other half of the surcharge on or before July 15, 2009.

Each municipality will pay a surcharge based on a dry weather design flow in millions of gallons per day (mgd) as follows:

less than 5 mgd = \$6,975

5 mgd to 9.9 mgd = \$13,950

10 mgd and greater = \$20,925

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

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

Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04; DEQ 5-2005, f. & cert. ef. 7-1-05; DEQ 11-2006, f. & cert. ef. 8-15-06; DEQ 5-2007, f. & cert. ef. 7-3-07; DEQ 8-2008, f. 6-27-08, cert. ef. 7-1-08

Rule Caption: Establishes a voluntary clean diesel upgrade program through grants, loans, and tax credits.

Adm. Order No.: DEQ 9-2008

Filed with Sec. of State: 7-11-2008

Certified to be Effective: 7-11-08

Notice Publication Date: 3-1-2008

Rules Adopted: 340-016-0270, 340-016-0280, 340-016-0290, 340-016-0300, 340-016-0310, 340-016-0320, 340-016-0330, 340-016-0340, 340-259-0005, 340-259-0010, 340-259-0015, 340-259-0020, 340-259-0025, 340-259-0030, 340-259-0035, 340-259-0040,

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340-259-0045, 340-259-0050, 340-259-0055, 340-259-0060, 340-259-0065

Rules Amended: 340-016-0210, 340-016-0220, 340-016-0230, 340-016-0250

Subject: This rulemaking initiates a clean diesel upgrade program through grants, loans, and tax credits as provided in HB 2172 and HB 3201 and extends the existing tax credit for new truck purchases in order to reduce excess lifetime cancer risk from diesel exhaust exposure in Oregon to one in a million by 2017. This rulemaking establishes procedures for issuing grants and tax credits, establishes a cost effectiveness threshold and other standards for qualifying projects, establishes project preferences, establishes application fees for tax credits, specifies a simplified application process for applicants with a small number of diesel engines, and specifies a target for school buses. Projects eligible for the tax credits, grants, and loans can include the scrapping of a pre-1994 truck engine, retrofitting a diesel engine, or repowering a non-road diesel engine. This rulemaking also describes the process DEQ will use to recognize third party Clean Diesel Service Providers. This rulemaking also extends the existing Tax Credit of new truck engine purchases to 2011, increase the application fee from \$15 to \$50, and decreases the program limitation from \$3 million to \$500,000.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-016-0210

Purpose

This rule establishes Department of Environmental Quality policies and procedures for issuing tax credits to Oregon taxpayers that purchase qualifying truck engines in accordance with Oregon Law 2003, chapter 618, sections 28 through 32. These rules apply only to purchases made on or after September 27, 2007, and certificates issued on or before December 31, 2011.

Stat. Auth.: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Hist.: DEQ 8-2004, f. & cert. ef. 9-17-04; DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0220

Definitions

- (1) “DEQ” means the Department of Environmental Quality.
- (2) “The 2003 Laws” means Oregon Laws 2003, chapter 618, sections 28 through 32 as reprinted in a note following ORS 315.356.
- (3) “Program limitation” means the maximum amount of \$500,000 that DEQ may approve in tax credits for all taxpayers in any one calendar year as provided by section 29(3) of the 2003 Laws.
- (4) “Tax credit” or “credit” means the truck engine tax credit or the amount of the truck engine tax credit.
- (5) “Taxpayer limitation” means the maximum amount of \$80,000 in tax credits that DEQ may approve for one taxpayer in any one calendar year as provided by section 28(3) of the 2003 Laws.

Stat. Auth.: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Hist.: DEQ 8-2004, f. & cert. ef. 9-17-04; DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0230

Application Procedures

- (1) Any Oregon taxpayer may submit an application to the DEQ after purchasing a qualifying engine and within the eligibility period provided by OAR 340-016-0210.
- (2) The taxpayer must apply for the tax credit on the form prescribed by DEQ.
- (3) The taxpayer may submit more than one application in a calendar year.
- (4) A single application may include more than one truck engine.
- (5) The taxpayer must file a complete application that includes all of the following elements:
 - (a) The taxpayer's name, contact information, and taxpayer identification number;
 - (b) The number of trucks owned prior to purchasing the engines claimed on the application;
 - (c) Proof of purchase for each truck engine claimed on the application. The proof of purchase must include the:
 - (A) purchase date;
 - (B) seller's name, address, location of the sale, and contact information;
 - (C) taxpayer's name that is identical to the name on the application; and
 - (D) vehicle identification number of the truck with the claimed engine;

- (d) A copy of the Oregon Department of Transportation registration cab card;
 - (e) The engine manufacturer, the engine serial number, and the federal Environmental Protection Agency diesel engine family number;
 - (f) The taxpayer's signature;
 - (g) Other information as requested; and
 - (h) The nonrefundable application fee of \$50 for each engine claimed on the application; and
 - (i) Other information required on the application form.
 - (6) An incomplete application is not eligible for an allocation of the limitation provided by ORS 340-016-0240 until the date that the taxpayer completes the application.
 - (7) The DEQ will notify the taxpayer within 14 days after receiving the application if the application is incomplete. The notification will:
 - (a) Request the missing information;
 - (b) Provide the taxpayer with the opportunity to submit additional information or make corrections; and
 - (c) Inform the taxpayer of the filing and allocation status provided by ORS 340-016-0240.
 - (8) DEQ may request other information to determine if the engine, the truck, and the applicant qualify for the credit according to the 2003 Laws.
 - (9) DEQ will file, but will not process, applications that exceed the program limitation and the taxpayer limitation.
 - (10) DEQ may not accept an application for a truck engine that has previously been issued a truck engine tax credit.
- Stat. Auth.: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Hist.: DEQ 8-2004, f. & cert. ef. 9-17-04; DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0250

Approval or Rejection Procedures

- (1) The DEQ will approve all qualifying truck engines within 45 days of the date that the taxpayer submits an application under the following conditions:
 - (a) The applicant filed the application within the eligibility period provided by OAR 340-016-0210; and
 - (b) The taxpayer filed a complete application according to OAR 340-015-0230; and
 - (c) The taxpayer purchased the truck from a dealer licensed with the Oregon Department of Motor Vehicles as a vehicle dealer on the date of purchase, or from a private party that is an Oregon resident.
 - (d) The engine, the truck, and the applicant qualify for the credit according to the 2003 Laws; and
 - (e) The engine has not previously been awarded a tax credit under OAR 340-016-0210 through 0260; and
 - (f) The program limitation has not expired for the current calendar year; and
 - (g) The taxpayer limitation has not expired for the current calendar year.
 - (2) The DEQ will:
 - (a) Reject all truck engines that do not qualify for approval under section 1 of this rule; and
 - (b) Provide the taxpayer with a written notice of the reason for the rejection within 45 days of the date that the taxpayer filed a complete application according to OAR 340-015-0230.
- Stat. Auth.: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356
Hist.: DEQ 8-2004, f. & cert. ef. 9-17-04; DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0270

Purpose and Scope

- (1) The purpose of the Clean Diesel Repower and Retrofit Tax Credits rule is to provide an incentive for making investments in qualifying projects that reduce diesel emissions from engines used in Oregon by 25 percent or more.
 - (2) OAR 340-016-0270 through 340-016-0340 apply only to a repower or retrofit that occurs between September 28, 2007 and January 1, 2018.
 - (3) OAR 340-016-0270 through 340-016-0340 establish the Department's requirements, standards and procedures used to approve tax credits for the certified costs necessary to perform qualified repowers of nonroad Oregon diesel engines and qualified retrofits of Oregon diesel engines.
- Stat. Auth.: OL 2007, chapter 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0280

Definitions

- As used in OAR 340-016-0270 through 340-016-0340, unless specifically defined otherwise:
- (1) “Applicable local, state or federal pollution or emissions law” means a regulation that requires a diesel engine to meet pollution or emis-

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sions standards and has a compliance date before the installation of a repower or retrofit is completed.

(2) "Applicant" means a person that submits a Repower Tax Credit Application or a Retrofit Tax Credit Application.

(3) "Clean Diesel Service Provider" means a person that the Department has certified under OAR 340-259-0065 to install qualifying repowers or retrofits under the Clean Diesel Repower and Retrofit Tax Credit regulations, OAR 340-016-0270 through 340-016-0340, or the Clean Diesel Grant and Loan regulations, 340-259-0005 through 340-259-0065.

(4) "Cost-effectiveness threshold" means the cost, in dollars, per ton of diesel particulate matter reduced determined pursuant to OAR 340-259-0025.

(5) "Department" means the Department of Environmental Quality.

(6) "Motor vehicle" has the meaning given that term in ORS 825.005.

(7) "Nonroad Oregon diesel engine" means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) "Oregon diesel engine" means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) "Program limitation" means the maximum amount that the Department may certify in tax credits during any one calendar year as authorized by the legislature.

(10) "Public highway" has the meaning given that term in ORS 825.005.

(11) "Qualified Installer" means the person that installs the repower or retrofit and is:

(a) A Clean Diesel Service Provider; or

(b) An employee of the applicant, if the applicant and vendor verify that the employee:

(A) Installed or will install the repower or retrofit to meet the warranty conditions; and

(B) Possesses the necessary skill to install the repower or retrofit.

(12) "Repower" means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(13) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold specified in OAR 340-259-0025.

(14) "Scrap" means to destroy and render inoperable.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356

Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356

Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0290

Standards for a Qualifying Repower or Retrofit

(1) To qualify for the Clean Diesel Repower and Retrofit Tax Credit, the repower or retrofit must:

(a) Be either a repower of a nonroad Oregon diesel engine or a retrofit of an Oregon diesel engine;

(b) For a retrofit, use technologies:

(A) Verified by the United States Environmental Protection Agency pursuant to its February 2002 Final Draft Testing Protocol "Generic Verification Protocol for Diesel Catalysts, Particulate Filters and Engine Modifications" or its September 2003 "Generic Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines;"

(B) Verified by the California Air Resources Board pursuant to Title 13, California Code of Regulations, Chapter 14, "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines," as in effect on June 18, 2008; or

(C) Determined by the Department to have been verified through an equivalent emission testing program;

(c) Reduce diesel particulate matter emissions by at least 25 percent compared to baseline emissions for the engine year and specific installation; and

(d) Be installed by a Qualified Installer.

(2) If the Department approved a Clean Diesel Repower and Retrofit Tax Credit application under OAR 340-016-0330 or a grant or loan application under OAR 340-259-0055 to repower or retrofit a vehicle or engine, a subsequent Clean Diesel Repower and Retrofit Tax Credit for the same vehicle or engine is available if the new repower or retrofit reduces diesel particulate matter emissions below the emissions achieved by the previous repower or retrofit.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356

Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356

Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0300

Application Procedures

(1) Any person may submit an application to the Department for a Clean Diesel Repower and Retrofit Tax Credit after completing a qualifying repower or retrofit that occurred between September 28, 2007 and January 1, 2018, and within one year following the invoice date of the qualifying repower or retrofit. The applicant:

(a) Must apply for the tax credit on the Repower Tax Credit Application or Retrofit Tax Credit Application published by the Department;

(b) May submit more than one application in a calendar year; and

(c) May include more than one repower or retrofit on one application.

(2) For Repower Tax Credit Applications, the applicant must file a complete application including:

(a) Documentation that the repower meets the standards of a qualifying repower pursuant to OAR 340-016-0290;

(b) An invoice for the scrapped engine that includes the name of the scrap yard, scrapping price and date, scrapped engine manufacturer and serial number, and, if available, EPA engine family number;

(c) Documentation that the engine block of the engine scrapped has had a hole drilled in it, or is otherwise destroyed or rendered inoperable; and

(d) The manufacturer name and serial number of the newly installed engine, electric motors, drives or fuel cells.

(3) For Retrofit Tax Credit Applications, the applicant must file a complete application including:

(a) Documentation that the retrofit meets the standards of a qualifying retrofit pursuant to OAR 340-016-0290;

(b) Documentation that the retrofit uses the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold specified in OAR 340-259-0025; and

(c) The manufacturer name and serial number of the engine.

(4) For Repower Tax Credit Applications and Retrofit Tax Credit Applications, the applicant must include:

(a) The name, address and taxpayer identification number of the applicant;

(b) The nonrefundable application fee of \$50 plus one percent of the potential tax credit;

(c) An itemized invoice for each repower or retrofit claimed on the application that includes:

(A) Installation date;

(B) Qualified Installer name and address;

(C) Location of the sale of the repower or retrofit and contact information for the vendor;

(D) The purchaser's name (which must be identical to the applicant);

(E) The vehicle identification number or serial number for each piece of equipment that is claimed as repowered or retrofitted on the application; and

(F) The plate number for each licensed motor vehicle on which the repower or retrofit was installed.

(d) A statement that the applicant agrees to audits of relevant records and inspection of the repower or retrofit, and will maintain the installed engine or technology in working condition to meet warranty requirements for three years;

(e) A statement by the applicant that at least 50 percent of the use of the engine, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine;

(f) A statement of the amount and source of any existing financial incentives from public funds that directly reduce the cost of the repower or retrofit, including tax credits, grants, loans or any other public financial assistance;

(g) A statement by the Qualified Installer that the repower or retrofit qualifies for the tax credit pursuant to OAR 340-016-0290;

(h) A statement by the applicant that the engine on which the repower or retrofit was performed is owned by the applicant;

(i) The applicant's signature attesting that the application is true and correct; and

(j) Any additional information the Department may require.

(5) Upon determining that it does not require any additional information and that the application is complete, the Department will review the application pursuant to OAR 340-016-0320.

(6) If the Department determines that it requires additional information or that the application is incomplete, the Department will request additional information no later than 60 days after receiving the application.

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(7) The applicant must submit the information requested under OAR 340-016-0300(6) within 30 days of the date of the Department's request, or the Department may deny the application.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0310

Tax Credit Cost Certification Letter

(1) If the Department approves an application pursuant to OAR 340-016-0330, it will issue a letter certifying the cost of a repower or retrofit according to OAR 340-259-0020. The letter may:

(a) Certify costs in a different amount than claimed in the application pursuant to OAR 340-259-0020; and
(b) Impose recordkeeping requirements, or other terms on the applicant and a tax credit transferee.

(2) The applicant must meet the requirements of the letter of certification regardless of any tax credit transfers.

(3) The Department will notify the Oregon Department of Revenue in writing if a certification letter has been revoked or modified.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0320

Allocating the Limitations

(1) The Department will allocate the program limitation among applicants according to the order in which the Department receives applications that it determines to be complete and do not require any additional information pursuant to OAR 340-016-0300.

(2) If the Department receives multiple applications on the same day that it determines to be complete and do not require any additional information, and the total of the Clean Diesel Repower and Retrofit Tax Credits requested on these applications would exceed the program limitation, the Department will allocate the remaining limitation using the following method:

(a) The Department will allocate the remaining program limitation to the application with the earliest postmarked date.

(b) If multiple applications share the earliest postmarked date, the Department will allocate the remaining program limitation to the application with the earliest invoice date.

(c) If multiple applications share the earliest invoiced date, the Department will allocate the remaining program limitation by random selection.

(3) Once the program limitation has been met, the Department will process applications as follows:

(a) If the Department determines that it requires additional information or that the application is incomplete, the Department will request additional information pursuant to OAR 340-016-0300(6); and

(b) Upon determining that it does not require any additional information and that the application is complete, the Department will review the application pursuant to OAR 340-016-0320 during the next calendar year.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0330

Application Approval or Denial Procedures

(1) Within 60 days of determining that it does not require any additional information and that the application is complete pursuant to OAR 340-016-0300, the Department must provide written notice to the applicant of the approval or denial of the application.

(2) The Department will approve an application if:

(a) The repower or retrofit occurred between September 28, 2007 and January 1, 2018;

(b) The applicant filed the application within one year following the date of the invoice for the qualifying repower or retrofit; and

(c) The repower or retrofit meets the standards of a qualifying repower or retrofit pursuant to OAR 340-016-0290.

(3) If the Department approves an application, the Department must issue a tax credit cost certification letter pursuant to OAR 340-016-0310.

(4) If the Department denies an application, the Department must provide the applicant with written notice of the reasons for the denial. The notification will include procedures for reconsideration and review under OAR 340-016-340.

(5) If the Department approves a cost certification in a lesser amount than claimed on the application, the Department must provide the applicant with written notice of the reasons for the different amount. The notification will include procedures for reconsideration and review under OAR 340-016-340.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-016-0340

Procedures for Reconsideration and Review of Denial

The applicant may appeal the Department's denial of an application or approval of a cost certification in a lesser amount than claimed on the application under OAR 340-016-0330(4)-(5) as follows:

(1) The applicant may request that the Department reconsider the denial if it provides additional information in writing to assist the Department in reconsidering the application, within 60 days of the date of the Department's notice of denial; or

(2) Appeal the denial as a contested case under ORS Chapter 183.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)), OL 2007, ch. 843 (HB 3201 (2007)), OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Stats. Implemented: OL 2003, Sec. 28 - 32, reprinted in a note following ORS 315.356
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0005

Clean Diesel Initiative Goal

(1) The Environmental Quality Commission establishes the Clean Diesel Initiative Goal to reduce excess lifetime risk of cancer due to exposure to diesel engine emissions to no more than one case per million individuals by 2017.

(2) In order to meet the Clean Diesel Initiative Goal, the Environmental Quality Commission establishes a target to substantially reduce the risk to school children from diesel engine emissions produced by Oregon school buses by the end of 2013. To achieve this target by 2013, the Department will use the grant, loan, and tax credit programs in OAR 340-016-0210 through 340-016-0340 and 340-259-0010 through 340-259-0065 to attempt to:

(a) Replace all Oregon diesel school buses model year 1993 and older with diesel school buses model year 2007 and newer;

(b) Retrofit half of Oregon diesel school buses model years 1994 through 2006 with best available emissions retrofit technology pursuant to OAR 340-259-0015(18); and

(c) Retrofit all appropriate Oregon diesel school buses model year 1994 and newer with closed crankcase ventilation, in order to reduce the exposure of school children to diesel particulate matter within the school bus cabin.

Stat. Auth.: OL 2007, ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0010

Purpose and Scope

The purpose of the clean diesel grant and loan rules is to make grants and loans available to the owners or operators of diesel engines for the retrofit of an Oregon diesel engine, for the repower of a non-road Oregon diesel engine, or for the scrapping of an Oregon truck engine.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0015

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Applicable local, state or federal pollution or emissions law" means a regulation that requires a diesel engine to meet pollution or emissions standards and has a compliance date before the installation of a repower or retrofit is completed.

(2) "Applicant" means the owner or operator of an Oregon diesel engine, a nonroad Oregon diesel engine or an Oregon diesel truck engine applying for a grant or loan under this division.

(3) "Clean Diesel Service Provider" means a person that the Department has certified under OAR-259-0065 to install qualifying repowers or retrofits under the Clean Diesel Repower and Retrofit Tax Credit regulations, OAR 340-016-0270 through 340-016-0340, or the Clean Diesel Grant and Loan regulations, 340-259-0005 through 340-259-0065.

(4) "Combined weight" has the meaning given that term in ORS 825.005.

(5) "Cost-effectiveness threshold" means the cost, in dollars, per ton of diesel particulate matter reduced determined pursuant to OAR 340-259-0025.

(6) "Grant Round" means the period of time in which the Department accepts applications for grants and loans and disburses grant or loan awards.

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(7) "Heavy-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(8) "Incremental cost" means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(9) "Medium-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(10) "Motor vehicle" has the meaning given that term in ORS 825.005.

(11) "Nonroad Oregon diesel engine" means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(12) "Operating condition" means functioning properly without any needed repairs.

(13) "Oregon diesel engine" means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(14) "Oregon diesel truck engine" means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(15) "Public highway" has the meaning given that term in ORS 825.005.

(16) "Qualified Installer" means a person that installs a repower or retrofit and is:

(a) A Clean Diesel Service Provider; or

(b) An employee of the applicant, if the applicant and vendor verify that the employee:

(A) Installed or will install the repower or retrofit to meet the warranty conditions; and

(B) Possesses the necessary skill to install the repower or retrofit.

(17) "Repower" means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(18) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold specified in OAR 340-259-0025.

(19) "Scrap" means to destroy and render inoperable.

(20) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).

Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))

Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0020

Determining the Certified Cost of a Qualifying Repower or Retrofit

(1) The Department must determine the certified cost of a qualifying repower or retrofit pursuant to this rule.

(2) The certified cost of a qualifying repower or retrofit may not exceed:

(a) The incremental cost of labor and equipment that the Department finds necessary to perform a qualifying repower or retrofit; or

(b) The cost effectiveness threshold.

(3) The Department must reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, other grants or loans, or any other public financial assistance.

(4) The certified cost of a qualifying retrofit of an Oregon diesel engine may include part or all of the reasonable costs of:

(a) The retrofit equipment, including delivery charges;

(b) Supplies directly related to the installation of the retrofit;

(c) Labor, including any re-engineering of the vehicle or retrofit equipment needed to install the retrofit equipment if performed by:

(A) A Clean Diesel Service Provider; or

(B) A Qualified Installer employed by the applicant, and the applicant provides documentation of the employee's work as to specific tasks, hours worked, compensation, and other information requested by the Department; and

(d) Other costs directly related to the retrofit, subject to Department approval.

(5) The certified cost of a qualifying repower of a non-road Oregon diesel engine may include part or all of the reasonable costs of:

(a) The new engine, used engine, remanufactured engine, electric motors, drives or fuel cells, including delivery charges;

(b) Additional equipment that must be installed with the new engine, used engine, remanufactured engine, electric motors, drives or fuel cells;

(c) Supplies directly related to the installation of the new engine, used engine, remanufactured engine, electric motors, drives or fuel cells;

(d) Removing and scrapping the old engine;

(e) Labor, including any re-engineering of the vehicle or repower equipment needed to install the new engine, used engine, remanufactured engine, electric motors, drives or fuel cells if performed by:

(A) A Clean Diesel Service Provider; or

(B) A Qualified Installer employed by the applicant, and the applicant provides documentation of the employee's work as to specific tasks, hours worked, compensation, and other information requested by the Department; and

(f) Other costs directly related to the repower, subject to Department approval.

(6) Ineligible Costs. The Department may not include the following in the certified cost:

(a) Expenses for travel;

(b) Interest and warranty charges;

(c) Costs of ordinary maintenance, operation, repair or replacement, including spare parts;

(d) Legal fees and associated costs;

(e) Fees to finance the project;

(f) Tax credit application and associated fees;

(g) Any labor of the owner or operator's employees not listed in subsections (4)(c) and (5)(e);

(h) The cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state, or federal pollution or emissions law.

(i) Costs incurred after the expiration date of the grant or loan agreement;

(j) Ordinary operating expenses that are not directly related to the project; or

(k) Other costs the Department excludes.

(7) The Department may require documentation of any costs claimed by the applicant and may reduce the certified cost of a qualifying repower or retrofit.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).

Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))

Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0025

Determining the Cost Effectiveness Threshold for a Repower or Retrofit

(1) Except as adjusted under section (2) of this rule, the cost effectiveness threshold is \$250,000 per ton of diesel particulate matter reduced for the calendar year 2008 and thereafter.

(2) On an annual basis, the Department may calculate an adjustment of the Cost Effectiveness Threshold amount specified in section (1) of this rule based upon the increase or decrease (if any) from August of the preceding year to August of the year in which the calculation is made in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).

Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))

Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0030

Standards for Qualifying Repowers and Retrofits

(1) To qualify for a grant or loan under this division, the repower or retrofit must:

(a) Be either a repower of a nonroad Oregon diesel engine or a retrofit of an Oregon diesel engine;

(b) For a retrofit, use technologies:

(A) Verified by the United States Environmental Protection Agency pursuant to its January 22, 2002 Final Draft Testing Protocol "Generic Verification Protocol for Diesel Exhaust Catalysts, Particulate Filters, and Engine Modification Control Technologies for Highway and Nonroad Use Diesel Engines" or its September 2003 "Generic Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines and Vehicles;"

(B) Verified by the California Air Resources Board pursuant to Title 13, California Code of Regulations, Chapter 14, "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines," as in effect on June 18, 2008; or

(C) Determined by the Department to have been verified through an equivalent emission testing program;

(c) Reduce diesel particulate matter emissions by at least 25 percent compared to baseline emissions for the engine year and specific installation; and

(d) Be installed by a Qualified Installer.

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(2) If the Department approved a Clean Diesel Repower and Retrofit Tax Credit application under OAR 340-016-0330 or a grant or loan application under OAR 340-259-0055 to repower or retrofit a vehicle or engine, a subsequent grant or loan under this division for the same vehicle or engine is available only if the new repower or retrofit reduces diesel particulate matter emissions below the emissions achieved by the previous repower or retrofit.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0035

Standards for Qualifying Oregon Diesel Truck Engine Scrapping Projects

(1) In order to qualify for an Oregon diesel truck engine scrapping grant, the engine to be scrapped must:

- (a) Have been manufactured prior to 1994;
- (b) Be in an operating condition at the time of the grant application or, if repairs are needed, the owner must demonstrate to the Department's satisfaction that the engine can be repaired to an operating condition for less than its commercial scrap value;
- (c) Have been used in Oregon at least 50 percent of the time, as measured by miles driven or hours operated, for the two years preceding the scrapping of the engine; and
- (d) Have been insured for driving for the two years preceding the scrapping.

(2) The engine to be scrapped does not qualify for an Oregon diesel truck engine scrapping grant if the owner or operator of the engine has applied for or received any other tax credit or other public financial assistance concerning emission reductions for the engine.

(3) Except as adjusted under section (6) of this rule, the maximum grant allowed for scrapping a medium-duty truck engine is \$2,000 for the calendar year 2008 and thereafter. The Department may allow grants for the maximum amount or a lesser amount.

(4) Except as adjusted under section (6) of this rule, the maximum grant allowed for scrapping a heavy-duty truck engine for a vehicle that has a combined weight under 33,000 pounds is \$2,000 for the calendar year 2008 and thereafter. The Department may allow grants for the maximum amount or a lesser amount.

(5) Except as adjusted under section (6) of this rule, the maximum grant allowed for scrapping a heavy-duty truck engine that has a combined weight that is 33,000 pounds or more is \$7,000 for the calendar year 2008 and thereafter. The Department may allow grants for the maximum amount or a lesser amount.

(6) On an annual basis, the Department may adjust the maximum grant amounts specified in subsections (3) to (5) of this section based upon the increase or decrease (if any) from August of the preceding year to August of the year in which the calculation is made in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0040

Approval Preferences for Grant and Loan Awards

(1) Subject to OAR 340-259-0045 to 340-259-0055, the Department may award grants and loans under this division based on all the following preferences, or may award grants and loans in a simplified year-round process that uses only the preferences in subsections (1)(a)–(c) of this section:

- (a) Percent of engine use in Oregon;
 - (b) Benefit to sensitive populations or areas with elevated concentrations of diesel particulate matter;
 - (c) Cost effectiveness;
 - (d) Length of project benefits;
 - (e) Commitment of funding, expertise, materials, labor or other assistance from third parties;
 - (f) Commitment to making additional air quality improvements such as, but not limited to participating in Oregon's Clean Fleets Recognition Program, EPA's SmartWay Transport Partnership, having a policy that specifies replacement of old equipment or reduces idling, or conducting a fleet analysis;
 - (g) Amount of emissions reductions in Oregon;
 - (h) The applicant's past grant or loan performance, such as maintenance and recordkeeping;
 - (i) Capacity to complete and maintain the repower, retrofit or scrap-project effectively; and
 - (j) Other preferences the Department may specify.
- (2) The Department may include, in any public notice announcing grant and loan availability, a request for applications for specific repower,

retrofit and scrapping projects or project areas that will be given preference. The Department may designate funds to target specific projects or areas.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0045

Grant and Loan Award Process

(1) The Department will determine the amount of grants and loans available, and may:

- (a) Allocate funds for specific engine types, geographic areas, or other specific purposes.
- (b) Establish and publish public notice of deadlines for submission of applications.
- (c) Make funds available for year-round application submissions.

When a year-round process is used:

- (A) Completed applications will be reviewed in the order they are received; and

(B) Funds will be awarded until they are no longer available.

- (d) Make funds available through grant rounds. When grant rounds are used:

(A) Completed applications received by the published deadline will be reviewed without preference for date of receipt;

(B) The Department may rank projects for purposes of grant and loan awards; and

(C) The Department will establish a maximum funding amount for each grant round that is less than the Department's available funding.

(2) The Department will allocate a portion of the funds available for grants and loans for applicants that own or operate 10 or fewer Oregon diesel engines and will provide for simplified access to financial assistance for those applicants.

(3) Beginning on June 25, 2008 and ending on June 30, 2010, the Department must reserve 75 percent of the funds available for grants and loans under this division for Oregon diesel engines that:

(a) Will be used in Oregon for at least 75 percent of the total number of miles that the vehicle is driven during the three years following the repowering or retrofitting of the engine; or

(b) Will be used in Oregon for at least 75 percent of the total number of hours the engine is operated during the three years following the repowering or retrofitting of the engine.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0050

Application Procedures

(1) An application for a grant or loan for a qualifying repower or retrofit must include:

- (a) The name and address of the applicant;
- (b) A complete budget for the proposed repower or retrofit, including a list of the different costs that comprise the total budget;
- (c) A workplan and schedule for completion of the proposed repower or retrofit;
- (d) A statement of the amount and source of any existing financial incentives from public funds that directly reduce the cost of the proposed repower or retrofit, including tax credits, grants, loans or any other public financial assistance;

(e) Any information requested by the Department that is necessary to evaluate the proposed repower or retrofit based on the approval preferences for grant and loan awards pursuant to 340-259-0040;

(f) Documentation that the proposed repower or retrofit meets the standards of a qualifying repower or retrofit pursuant to OAR 340-259-0030;

(g) The manufacturer name and serial number of the engine to be retrofitted or the engine, electric motors, drives or fuel cells to be installed as a repower, and, if available, the federal Environmental Protection Agency diesel engine family number;

(h) For the vehicle or equipment on which the repower or retrofit will be performed, the vehicle identification number or identification number, and license plate number for licensed motor vehicles;

(i) For a retrofit, documentation that the retrofit will use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold;

(j) For a repower, documentation that the repower will have a minimum seven-year useful life.

(k) A statement by the applicant that at least 50 percent of the use of the engine, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine;

(l) The applicant's signature attesting that the application is true and correct; and

(m) Any additional information the Department may require.

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(2) An application for an Oregon diesel truck engine scrapping project must include:

- (a) The name and address of the applicant;
 - (b) A complete budget for the proposed scrapping project, including a list of the different costs that comprise the total budget;
 - (c) A statement of the amount and source of any existing financial incentives that directly reduce the cost of the proposed scrapping project, including tax credits, grants, loans or any other public financial assistance;
 - (d) Any information requested by the Department that is necessary to evaluate the proposed scrapping project;
 - (e) Documentation that the proposed scrapping project qualifies for an Oregon diesel truck engine scrapping grant pursuant to OAR 340-259-0035;
 - (f) The vehicle identification number for the vehicle from which the engine will be scrapped, and license plate number for licensed motor vehicles;
 - (g) Documentation that the engine was used in Oregon at least 50 percent during the last two years as measured by miles driven or hours operated;
 - (h) Documentation that the engine was insured for driving for the two years preceding the scrapping;
 - (i) The applicant's signature attesting that the application is true and correct; and
 - (j) Any additional information the Department may require.
- (3) Applications must be submitted on the most current form prescribed by the Department. Current applications forms are available on the Department's website.

(4) Upon determining that it does not require any additional information and that the application is complete, the Department will review the application pursuant to OAR 340-259-0055.

(5) If the Department determines that it requires additional information or that the application is incomplete, the Department will request additional information no later than 30 days after receiving the application.

(6) The applicant must submit the information requested under OAR 340-259-0050(5) within 30 days of the date of the Department's request, or the Department may deny the application.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0055

Review and Approval or Denial

(1) Within 30 days of determining that it does not require any additional information and that the application is complete pursuant to OAR 340-259-0050(4), the Department must provide written notice to the applicant of whether it has approved or denied the application, and if approved, the amount of the grant or loan.

(2) The Department will approve or deny completed applications based on funding availability, application content, whether the project meets the standards of a qualified repower, retrofit or Oregon diesel truck engine scrapping project, and approval preferences for grant and loan awards pursuant to 340-259-0040.

(3) For approved applications, the Department may award grants and loans in amounts less than requested by the applicant. The Department determination the amount of the grant or loan based on funding availability, application content, and approval preferences for grant and loan awards pursuant to 340-259-0040.

(4) Applications that are denied due to lack of funding may be resubmitted if the Department obtains additional funding.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0060

Grant or Loan Agreements and Conditions

(1) Following approval of the application for a repower or retrofit grant or loan pursuant to OAR 340-259-0055, the Department and the applicant will enter into an agreement with the following terms and conditions:

- (a) Recordkeeping requirements;
- (b) Maintenance requirements;
- (c) End date — term of project;
- (d) Method of payment;
- (e) Audit by the Department; and
- (f) Other terms and conditions necessary to monitor compliance with applicable requirements of the grant or loan.

(2) Following approval of the application for a truck engine scrapping project, the Department will provide the grant money to the applicant within 30 days, provided that the allocation for truck scrapping grants has not been exceeded.

(3) If the repower or retrofit has not been fully completed within one year of the Department approval, funding may be terminated. The money

allocated to the grant or loan will be available for reallocation by the Department.

(4) The Department may allow an extension of time for a grant or loan recipient to complete a project, upon receipt from the fund recipient, and Department approval, of acceptable documentation of need.

(5) The Department may at any time review and audit requests for payment and make adjustments due to mathematical errors, items not built or bought, unreasonable costs, lack of progress under the grant or loan, or other reasons.

(6) The Department may require grant and loan recipients to submit records and materials necessary to monitor compliance with applicable requirements and the grant or loan agreement, including but not limited to:

- (a) Relevant invoices;
- (b) For a repower or truck engine scrapping grant, an invoice for the scrapped engine that includes the name of the scrap yard, scrapping price and date, scrapped engine manufacturer and serial number, and, if available, EPA engine family number; and
- (c) For a repower or truck scrapping grant, documentation that the engine block of the scrapped engine has had a hole drilled in it or has otherwise been destroyed or rendered inoperable.

(7) If the recipient does not comply with applicable requirements, including but not limited to the grant or loan agreement, the Department may:

- (a) Order the recipient to refund all grants and loans received;
 - (b) Impose penalties pursuant to ORS 468.140; or
 - (c) Take any other appropriate legal or enforcement action.
- (8) Grants and loans will be disbursed to the recipient within 30 days of receipt by the Department of a completed grant or loan disbursement request form accompanied by receipts, invoices or other documentation required by the grant or loan agreement.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)).
Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007))
Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

340-259-0065

Certification as a Clean Diesel Service Provider

(1) The Department may certify a person as a Clean Diesel Service Provider.

(2) A Clean Diesel Service Provider must:

- (a) Provide applicants with information about Department tax credit, grant, and loan regulations applicable to the repower or retrofit, and may assist applicants with the tax credit, grant, and loan application forms;
- (b) Install repowers and retrofits according to tax credit, grant, and loan regulations;
- (c) Provide applicants with warranty information, estimated annual maintenance costs, an anticipated maintenance schedule, and any other information needed to maintain performance of the repower or retrofit; and
- (d) Verify the quality and performance of an installation.

(3) The Department may certify a person as a Clean Diesel Service Provider on one or more technologies.

(4) To obtain certification as a Clean Diesel Service Provider, the person must demonstrate:

- (a) One or more employees have technical expertise with repower and retrofit technology;
- (b) Possession of equipment required to analyze a diesel engine to determine appropriate retrofit or repower technology;
- (c) One or more employees are trained in technology selection, installation, and support of exhaust emission devices or repowering engines;
- (d) Professionalism while interacting with the Department and applicants;
- (e) Evidence that the person has been authorized to do warranty work or install devices or engines to maintain warranty; and
- (f) Other qualifications required by the Department.

(5) The Department may revoke the certification of a Clean Diesel Service Provider if the Department finds that the person or one or more of its employees:

- (a) Obtained certification by fraud or misrepresentation;
- (b) Performed an installation that does not meet industry standards. The Department may find that the Clean Diesel Service Provider's performance does not meet industry standards if the person or one of its employees:

- (A) Does not carry the required level of insurance, licensure or bonding set by the Department;
- (B) Fails to install the repower or retrofit in compliance with standards adopted under OAR 340-016-0210 through 340-016-0260 and 340-259-0010 through 340-259-0065;
- (C) Fails to install the repower or retrofit system in a professional manner as determined by the Department;
- (D) Fails to install the repower or retrofit system to comply with manufacturers' published specifications;
- (E) Fails to honor contract provisions;

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(F) Fails to honor a warranty that they are contractually obligated to perform;

(G) Fails to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by the Department within 30 days of written notification identifying the problem from the Department, unless a time extension is granted by the Department; or

(H) Does not meet eligibility requirements in subsection (4).

(c) Misrepresented to the applicant either the tax credit, grant, or loan program or the nature or quality of the repower or retrofit by:

(A) Providing false or misleading information to the applicant regarding the availability, amount or nature of the tax credit, grant, or loan;

(B) Providing false or misleading information to the applicant regarding the tax credit, grant, or loan application;

(C) Providing false or misleading information to the applicant regarding eligibility standards for the tax credit, grant or loan;

(D) Misrepresenting the nature of the performance of the repower or retrofit or claimed excess emission reductions to the applicant and to the Department;

(E) Misrepresenting the cost of a repower or retrofit;

(F) Misrepresenting a competitor's product or service; or

(G) Failing to make corrections requested in writing by the Department to remedy violations of (A) through (F) of this subsection within 30 days, unless more time is allowed by the Department.

(6) Certification is not a guarantee or warranty of any kind that the Clean Diesel Service Provider will properly install any individual repower or retrofit or perform any other work as certified. As a condition of certification, the Department may require the person to defend, indemnify and hold the Department harmless from any claims related to work performed by the person related to its certification.

Stat. Auth.: OL 2007, Ch. 855 (HB 2172 (2007)), OL 2007, Ch. 843 (HB 3201 (2007)).

Stats. Implemented: OL 2007, Ch. 855 (HB 2172 (2007)), OL 2007, Ch. 843 (HB 3201 (2007)).

Hist.: DEQ 9-2008, f. & cert. ef. 7-11-08

Department of Fish and Wildlife Chapter 635

Rule Caption: Close Recreational Spring Chinook Fishery In the Snake River Below Hells Canyon Dam.

Adm. Order No.: DFW 64-2008(Temp)

Filed with Sec. of State: 6-18-2008

Certified to be Effective: 6-21-08 thru 7-31-08

Notice Publication Date:

Rules Amended: 635-023-0134

Rules Suspended: 635-023-0134(T)

Subject: Amend rule to close the recreational spring Chinook salmon fishery in the area from the Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam on the Snake River effective at 11:59 p.m. on June 21, 2008 to coincide with the state of Idaho's closure of this fishery.

Rules Coordinator: Therese M. Kucera—(503) 947-6033

635-023-0134

SNAKE RIVER FISHERY

(1) Notwithstanding, all other specifications and restrictions as outlined in the current **2008 Oregon Sport Fishing Regulations**, the following conditions apply:

(2) The Snake River from Dug Bar boat ramp upstream to the deadline below Hell's Canyon Dam is open seven (7) days per week, effective April 26, 2008 through June 21, 2008.

(3) Daily bag limit is three (3) adult adipose fin-clipped spring Chinook salmon per day. Two adipose fin-clipped jack Chinook salmon may be retained in addition to the adult bag limit.

(4) Barbless hooks are required.

(5) The Snake River spring Chinook salmon fishery described in section 2 above closes effective 11:59 p.m. Sunday, June 21, 2008.

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

Rule Caption: Commercial Oregon Ocean Terminal Area Chinook Salmon Fisheries.

Adm. Order No.: DFW 65-2008(Temp)

Filed with Sec. of State: 6-20-2008

Certified to be Effective: 9-1-08 thru 12-31-08

Notice Publication Date:

Rules Amended: 635-003-0085

Subject: Amend rules to implement Commercial Oregon ocean terminal area Chinook salmon fisheries beginning September 1, 2008.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-003-0085

Extended Commercial Seasons

In addition to the open seasons prescribed in OAR 635-003-0003 there are open seasons for Chinook salmon as follows:

(1) Chetco River Ocean Terminal Area — from October 5–8, 12–15, and 19–31 or the earlier of a 250 Chinook quota in the area described in section (1)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of the north shore of Twin Rocks (42°05'36" N. Lat.) to the Oregon/California border (42°00'00" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (1) it is *unlawful* to take Chinook salmon less than 28 inches in total length; it is *unlawful* to use multipoint or barbed hooks, or to fish more than four spreads per line; it is *unlawful* to make more than one landing of Chinook per day; and it is *unlawful* to have in possession or to land more than 10 Chinook per day taken in this fishery. Landings are restricted to Brookings.

(2) Elk River Ocean Terminal Area — from November 1–30 or the earlier of a 250 Chinook quota in the area described in section (2)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of Cape Blanco (42°50'20" N. Lat.) and north of Humburg Mountain (42°40'30" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (2), it is *unlawful* to take Chinook salmon less than 28 inches in total length; it is *unlawful* to use multipoint or barbed hooks, or to fish more than four spreads per line; it is *unlawful* to make more than one landing of Chinook per day; and it is *unlawful* to have in possession or to land more than 10 Chinook per day taken in this fishery. Landings are restricted to Port Orford.

(3) Tillamook Bay Ocean Terminal Area — from September 1 through November 15 or the earlier of a 500 Chinook quota in the area described in section (3)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area between Pyramid Rock (45°29'48" N. Lat.) and Twin Rocks (45°35'54" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (3), it is *unlawful* to take Chinook salmon less than 28 inches in total length; it is *unlawful* to use multipoint or barbed hooks, or to fish more than four spreads per line; and it is *unlawful* to have in possession or to land more than 25 Chinook per calendar week (Sunday through Saturday).

Stat. Auth.: ORS 496.138, 496.146, & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 48-1984(Temp), f. & ef. 8-31-84; 57-1984(Temp), f. & ef. 9-15-84; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 106-1992(Temp), f. 10-8-92, cert. ef. 10-24-92; FWC 111-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 80-1994(Temp), f. 10-25-94, cert. ef. 10-26-94; FWC 82-1994(Temp), f. 10-28-94, cert. ef. 10-30-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 85-1995(Temp), f. & cert. ef. 10-20-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 66-1997(Temp), f. 10-24-97, cert. ef. 10-26-97; FWC 67-1997(Temp), f. 10-28-97, cert. ef. 10-29-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 78-2006(Temp), f. 8-7-06, cert. ef. 9-1-06 thru 12-15-06; Administrative correction 12-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 65-2008(Temp), f. 6-20-08, cert. ef. 9-1-08 thru 12-31-08

Rule Caption: Modifications to Ocean Troll Salmon Seasons North of Cape Falcon, Oregon.

Adm. Order No.: DFW 66-2008(Temp)

Filed with Sec. of State: 6-20-2008

Certified to be Effective: 6-21-08 thru 10-31-08

Notice Publication Date:

Rules Amended: 635-003-0004, 635-003-0077, 635-013-0004

Rules Suspended: 635-003-0004(T), 635-013-0004(T)

Subject: Amended rules 635-003-0004 and 635-003-0077 modify the landing and possession limits, per vessel participating in the commercial troll salmon fishery North of Cape Falcon, Oregon effective June 21 for the four day period through June 24, 2008. Amended rule 535-013-0004 increases the daily bag limit in the recreational ocean salmon fishery North of Cape Falcon from one to two Chinook per angler effective June 21. And effective June 29, 2008 rule 635-013-0004 is modified to allow a daily bag limit of two legal size salmon, but all coho retained must have a healed-over adipose fin clip.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-003-0004

Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subpart H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; FWC 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; FWC 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; FWC 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; FWC 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; FWC 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; FWC 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; FWC 31-1999, f. & cert. ef. 5-3-99; FWC 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; FWC 24-2000, f. 4-28-00, cert. ef. 5-1-00; FWC 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; FWC 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; FWC 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; FWC 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; FWC 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; FWC 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; FWC 28-2001, f. & cert. ef. 5-1-01; FWC 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; FWC 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; FWC 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; FWC 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; FWC 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; FWC 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; FWC 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; FWC 37-2002, f. & cert. ef. 4-23-02; FWC 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; FWC 65-2002(Temp), 6-27-02, cert. ef. 7-1-02 thru 12-27-02; FWC 72-2002(Temp), f. 7-11-02, cert. ef. 7-12-02 thru 12-31-02; FWC 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; FWC 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; FWC 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; FWC 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; FWC 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; FWC 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; FWC 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; FWC 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; FWC 35-2003, f. 4-30-03, cert. ef. 5-1-03; FWC 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; FWC 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; FWC 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; FWC 25-2005, f. & cert. ef. 4-15-05; FWC 13-2006(Temp), f. 3-14-06, cert. ef. 3-15-06 thru 4-30-06; FWC 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; FWC 24-2007, f. 4-16-07, cert. ef. 5-1-07; FWC 78-2007(Temp), f. & cert. ef. 8-20-07 thru 8-31-07; FWC 79-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 9-13-07; FWC 85-2007(Temp), f. 9-5-07, cert. ef. 9-10-07 thru 9-13-07; Administrative correction 9-16-07; FWC 24-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; FWC 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08

635-003-0077

US-Canada Border to Cape Falcon

(1) All vessels participating in the commercial ocean salmon fishery must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

(2) The commercial troll salmon fishery landing and possession limit is reduced from 50 to 35 Chinook per vessel for the four-day open period June 21 through June 24, 2008 in the area North of Cape Falcon. The fishery will not reopen on June 28, 2008 as previously scheduled.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert. ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05; DFW 49-2005(Temp), f. 6-1-05, cert. ef. 6-3-05 thru 10-27-05; DFW 59-2005(Temp), f. 6-21-05, cert. ef. 6-26-05 thru 10-27-05; DFW 97-2005(Temp), f. & cert. ef. 8-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 43-2006(Temp), f. & cert. ef. 6-16-06 thru 11-16-06; DFW 70-2006(Temp), f. 7-28-06, cert. ef. 7-29-06 thru 12-31-06; DFW 85-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 2-14-07; DFW 93-2006(Temp), f. 9-7-06, cert. ef. 9-8-06 thru 12-31-06; Administrative correction 1-16-07; DFW 48-2007(Temp), f. 6-22-07, cert. ef. 6-23-07 thru 9-16-07; DFW 73-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 9-30-07; Administrative correction 10-16-07; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through OAR 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2008 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2008 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2008 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

(4) Effective 12:01 a.m. Saturday, June 21, 2008, in the recreational ocean salmon fishery from Leadbetter Point, WA, to Cape Falcon, OR, the daily bag limit is increased from one to two Chinook per angler.

(5) Effective 12:01 a.m. Sunday, June 29, 2008, in the recreational ocean salmon fishery from Leadbetter Point, WA, to Cape Falcon, OR, the daily bag limit is two legal size salmon. All coho retained must have a healed-over adipose fin clip.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; FWC 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; FWC 31-1999, f. & cert. ef. 5-3-99; FWC 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; FWC 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; FWC 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; FWC 24-2000, f. 4-28-00, cert. ef. 5-1-00; FWC 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; FWC 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; FWC 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; FWC 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; FWC 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; FWC 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; FWC 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; FWC 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; FWC 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; FWC 35-2003, f. 4-30-03, cert. ef. 5-1-03; FWC 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; FWC 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; FWC 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; FWC 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; FWC 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; FWC 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; FWC 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; FWC 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; FWC 24-2007, f. 4-16-07, cert. ef. 5-1-07; FWC 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; FWC 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; FWC 136-2007, f. 12-31-07, cert. ef. 1-1-08; FWC 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; FWC 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08

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

Adm. Order No.: DFW 67-2008(Temp)

Filed with Sec. of State: 6-20-2008

Certified to be Effective: 8-1-08 thru 12-31-08

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Amended: 635-013-0007, 635-013-0009, 635-014-0090, 635-016-0090

Rules Suspended: 635-013-0004(T), 635-013-0009(T), 635-014-0090(T)

Subject: Amend rules to implement Ocean sport fisheries or mixed stock, terminal areas, and coastal streams within the Marine, Northwest and Southwest zones beginning August 1, 2008.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-013-0007

Special South Coast Seasons

In addition to the open seasons prescribed in OAR 635-013-0005 there are open seasons for Chinook salmon as follows:

(1) Elk River Area:

(a) From November 1–30 in the area south of Cape Blanco (42°50'20" N. Lat.) and north of Humbug Mountain (42°40'30" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described for the Elk River Area in section (1)(a) of this rule it is *unlawful* to take Chinook salmon less than 24 inches in length. In the aggregate combined with other open areas in the Marine, Northwest, and Southwest Zones (including terminal areas and inland fisheries): 2 adult Chinook salmon per day, only 1 of which may be a non fin clipped Chinook, 20 per year of which only 5 may be non fin clipped Chinook per season Aug. 1–Dec. 31. It is *unlawful* to use multipoint or barbed hooks.

(2) Chetco River Area:

(a) From October 1–4, if weather limits effort in the October 1-4 open period and sufficient fish remain in the 250 Chinook goal, then alternate open fishing dates of October 10–11 and 17–18 will be considered for the fishery in an area south of the north shore of Twin Rocks (42°05'36" N. Lat.) to the Oregon/California border (42°00'00" N. Lat.) and seaward three nautical miles offshore.

(b) During the seasons described in section (2)(a) of this rule it is *unlawful* to take Chinook salmon less than 24 inches in length. No more than one Chinook salmon may be retained per day and no more than four fish may be retained during the October season. In the aggregate combined with other open areas in the Marine, Northwest, and Southwest Zones (including terminal areas and inland fisheries): 2 adult Chinook salmon per day and 20 adult Chinook salmon per year of which only 5 may be non fin clipped Chinook per season Aug. 1–Dec. 31. It is *unlawful* to use multipoint or barbed hooks.

Stat. Auth.: ORS 496.138, 496.146, & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 25-1982, f. & ef. 4-30-82; FWC 62-1983(Temp), f. & ef. 11-1-83; FWC 69-1984(Temp), f. & ef. 10-2-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 77-1986(Temp), f. & ef. 11-26-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 101-1992, f. 9-29-92, cert. ef. 10-1-92; FWC 114-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 78-1994(Temp), f. 10-20-94, cert. ef. 10-21-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 84-1995(Temp), f. 10-13-95, cert. ef. 10-16-95; FWC 86-1995(Temp), f. 10-20-95, cert. ef. 10-21-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08

635-013-0009

Tillamook Terminal Area Ocean Fishery

(1) In addition to the open seasons prescribed in OAR 635-013-0004 there are open seasons for Chinook salmon in the areas described in Sections (2) and (3) of this rule.

(2) The Pacific Ocean waters inside an area south of Twin Rocks (45°35'54" N. Lat.) and north of Pyramid Rock (45°29'48" N. Lat.) and seaward three nautical miles offshore are closed for Chinook salmon until September 1.

(3) During the open season for adipose fin clipped coho salmon in the ocean, the Terminal Area described in section (2) of this rule is closed to angling for Chinook salmon consistent with federal sport salmon management measures for the area south of Cape Falcon.

(4) During the period Sept. 1–Nov. 15, in the area described in section (2), in the aggregate combined with other open areas in the Marine, Northwest, and Southwest Zones (including terminal areas and inland fisheries) no more than two adult Chinook salmon, only one of which may be a non fin clipped Chinook, may be retained per day and 20 per year of which no more than 5 non fin clipped adult Chinook salmon may be retained per season Aug. 1–Dec. 31. For purposes of this rule, adult salmon are Chinook having a length greater than 24 inches.

(5) No more than two single-point, single-shank barbless hooks are required in the ocean adipose fin clipped coho salmon fishery and in the ocean outside the Terminal Area at all times.

Stat. Auth.: ORS 496.138, 496.146, & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 45-1983(Temp), f. & ef. 9-16-84; FWC 57-1984(Temp), f. & ef. 9-15-84; FWC 64-1984(Temp), f. & ef. 9-21-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08

635-014-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the 2008 Oregon Sport Fishing Regulations, the following restrictions apply to the Northwest Zone: In the aggregate, combined with other open areas in the Marine and Southwest Zones (including terminal areas and inland fisheries), 2 adult salmon or steelhead may be retained per day of which only 1 may be a non fin clipped Chinook; 20 adult salmon or steelhead may be retained per year of which only 5 may be a non fin clipped Chinook Aug. 1–Dec. 31; and 5 jack salmon per day, 2 daily jack limits allowed in possession.

(3) Alsea River (Lincoln Co.): Mainstem, including tidewater upstream to Five Rivers (river mile 23) is open for Chinook salmon Aug. 1–Dec. 31.

(4) Five Rivers (Alsea Basin, Lincoln, Lane, and Benton Cos.): Closed for Chinook salmon Aug. 1–Dec. 31.

(5) Lake Creek (Lane Co.):

(a) Closed for Chinook salmon Aug. 1–Dec. 31.

(b) Upstream to Deadwood Creek is open for Chinook salmon May 24–July 31.

(6) Siletz River and Bay (Lincoln Co.): Open for Chinook salmon Aug. 1–Dec. 31, upstream to lower Hwy. 229 Bridge near mile post 23 just north of the town of Siletz (river mile 38).

(7) Siuslaw River (Lane Co.): Mainstem, including tidewater upstream to Lake Creek (river mile 30) is open for Chinook salmon Aug. 1–Dec. 31.

(8) Big Elk Creek (Yaquina Basin, Lincoln Co.): Mainstem, including tidewater, upstream to confluence with Bear Creek (river mile 5 at Bear Creek — Updyke Rd.) is open for Chinook salmon Aug. 1–Dec. 31.

(9) Yachats River (Lincoln Co.): Open for Chinook salmon May 24–Dec. 31. Only 1 adult Chinook salmon per day and 5 per year. From Aug. 1–Dec. 1, any non fin clipped adult Chinook retained per day counts towards the 5 total non fin clipped adult Chinook for the aggregate.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06,

ADMINISTRATIVE RULES

cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08

635-016-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the **2008 Oregon Sport Fishing Regulations**, the following restrictions apply to the Southwest Zone: In the aggregate, combined with other open areas in the Marine and Northwest zones (including terminal areas and inland fisheries), 2 adult salmon or steelhead may be retained per day of which only 1 may be a non fin clipped Chinook Aug. 1–Dec. 31; 20 adult salmon or steelhead may be retained per year of which only 5 may be a non fin clipped Chinook Aug. 1–Dec. 31; and 5 jack salmon per day, 2 daily jack limits allowed in possession. Exceptions include:

(a) Coos Bay (including Isthmus Slough), Coos River, South Coos River (upstream to Besse Creek only), and Millicoma River (upstream to Dora's Place Boat Ramp only): 2 adult salmon or steelhead per day, 20 per year, of which only 10 may be non fin clipped Chinook salmon. Non fin clipped Chinook taken in open areas of the Marine, Northwest or Southwest zones (including terminal areas and inland fisheries) must be counted in the aggregate. Five jacks may be retained per day, 2 daily jack limits allowed in possession.

(b) Rogue River (Curry/Josephine/Jackson Cos.): 2 adult salmon or steelhead per day, 20 per year, of which only 10 may be non fin clipped Chinook salmon. Non fin clipped Chinook taken in open areas of the Marine, Northwest or Southwest zones (including terminal areas and inland fisheries) must be counted in the aggregate. Five jacks may be retained per day, 2 daily jack limits allowed in possession.

(A) Mainstem upstream to Hog Creek boat landing, including tidewater is open for Chinook salmon Aug. 1–Dec. 31.

(B) Hog Creek boat landing to Gold Ray Dam is open for Chinook salmon Aug. 1–Sept. 30 and closed for Chinook salmon Oct. 1–Dec. 31.

(C) Gold Ray Dam to Cole Rivers Hatchery Diversion Dam is closed for Chinook salmon Aug. 1–Dec. 31.

(D) All non fin clipped Chinook salmon retained in the Rogue River mainstem upstream to Elephant Rock (river mile 3.0) from July 12 through July 31, 2008 must be counted in the aggregate as described in subsection (2)(b) above.

(3) Chetco River (Curry Co.):

(a) Open for steelhead Jan. 1–March 31 and May 24–Dec. 31; and

(b) Open for Chinook salmon Nov. 1–Dec. 31.

(4) Coquille River (Coos Co.):

(a) Inland from the tips of the jetties upstream to the South Fork, including tidewater open for Chinook salmon Aug. 1–Dec. 31 and adipose fin clipped steelhead entire year;

(b) Middle Fork open for adipose fin clipped steelhead Nov. 15–Dec. 31. Closed for Chinook salmon;

(c) North Fork open for adipose fin clipped steelhead Nov. 15–Dec. 31. Closed for Chinook salmon;

(d) South Fork open for adipose fin clipped steelhead Nov. 15–Dec. 31; and closed for salmon upstream of confluence with Middle Fork, near Highway 42 and Powers Highway junction.

(5) Coos River (Coos Co.):

(a) Mainstem and South Fork up to Besse Creek at river mile 6.25 is open for Chinook salmon Aug. 1–Dec. 31 and adipose fin clipped steelhead entire year.

(b) South Fork from Besse Creek upstream to concrete bridge located near Tioga Creek is open for adipose fin clipped steelhead Nov. 15–Dec. 31.

(6) Millicoma River (Coos Co.):

(a) Mainstem up to Dora's Place Boat Ramp at river mile 0.25 is open for Chinook salmon Aug. 1–Dec. 31.

(b) Mainstem, including tidewater, open for adipose fin clipped steelhead Nov. 1–Dec. 31.

(c) East and West Forks are open for adipose fin clipped steelhead Nov. 15–Dec. 31.

(7) Floras Creek & Floras Lake outlet (Curry Co.) are open from New River upstream to Floras Creek Bridge at mile point 1.5 on Floras Creek County Road (river mile 5) for Chinook salmon Aug. 1–Dec. 31.

(8) Sixes River (Curry Co.) mainstem upstream to Edson Creek (river mile 10) including tidewater open for Chinook salmon Aug. 1–Dec. 31.

(9) Umpqua River Basin (Douglas Co.):

(a) Umpqua River mainstem, including tidewater from the tips of the jetties upstream to the confluence with the North and South Forks: Open for adipose fin clipped steelhead entire year; open for adipose fin clipped coho

salmon Aug. 1–Dec. 31; and open for Chinook salmon Aug. 1–Dec. 31. Use of bait allowed.

(b) Smith River mainstem from the mouth upstream to Spencer Creek open for Chinook salmon Aug. 1–Dec. 31 and adipose fin clipped steelhead Jan. 1–March 31 and May 24–Dec. 31. Use of bait allowed in tidewater areas.

(10) Pistol River (Curry Co.) mainstem including tidewater: Open for Chinook salmon downstream of Deep Creek Oct. 1–Dec. 31; 1 adult or jack Chinook per day, 5 adults per year. From Aug. 1–Dec. 31, any non fin clipped adult retained counts toward the aggregate seasonal limit.

(11) Hunter Creek (Curry Co.) mainstem including tidewater: Open for Chinook salmon downstream of Mateer Bridge Oct. 1–Dec. 31; 1 adult or jack Chinook per day, 5 adults per year. From Aug. 1–Dec. 31, any non fin clipped adult retained counts toward the aggregate seasonal limit.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08

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Rule Caption: Sockeye Salmon Fisheries in the Columbia River Mainstem and Tributaries.

Adm. Order No.: DFW 68-2008(Temp)

Filed with Sec. of State: 6-20-2008

Certified to be Effective: 6-21-08 thru 8-31-08

Notice Publication Date:

Rules Amended: 635-023-0128, 635-041-0076, 635-042-0027, 635-042-0110

Rules Suspended: 635-023-0128(T), 635-041-0076(T), 635-042-0027(T), 635-042-0110(T)

Subject: Amended rule 635-042-0110 extends, by two additional days, the commercial shad season in Columbia River. Amended rule 635-023-0128 allows retention and sales of sockeye salmon taken during ongoing treaty Indian commercial summer salmon fisheries in the Columbia River mainstem and tributaries. Amended rule 635-042-0027 allows retention and sales of sockeye salmon caught during the non-Indian commercial summer salmon fisheries in the Columbia River. Modifications are consistent with action taken June 19, 2008 by the Columbia River Compact agencies of Oregon and Washington in coordination with the Columbia River Treaty Tribes.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0128

Summer Sport Fishery

(1) The **2008 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 **2008 Oregon Sport Fishing Regulations**.

ADMINISTRATIVE RULES

(2) Notwithstanding all other specifications and restrictions in the **2008 Oregon Sport Fishing Regulations:**

(a) Effective June 16 through July 31, 2008, the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to I-5 Bridge is open to the retention of jack Chinook salmon and adipose fin-clipped steelhead;

(b) Effective June 21 through June 28, 2008 the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult and jack Chinook salmon and sockeye salmon;

(c) Effective June 16 through July 31, 2008, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult and jack Chinook salmon;

(d) Effective June 21 through July 31, 2008, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of sockeye salmon; and

(e) Effective June 16 through July 31, 2008, the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Oregon/Washington border is open to the retention of jack Chinook salmon.

(f) The daily bag limit for adult Chinook salmon, all sockeye, and adipose fin-clipped steelhead combined is two fish; 5 jack Chinook salmon per day, 2 daily Chinook jack limits allowed in possession.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08

635-041-0076

Summer Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Monday, June 16, 2008 until further notice.

(a) Gear is restricted to subsistence fishing gear: hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Allowable sales include Chinook, coho, sockeye, steelhead, walleye, carp, and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 48 and 60 inches in length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 42 and 60 inches in length taken from the Bonneville Pool may be kept for subsistence use. White sturgeon caught in subsistence fisheries downstream of Bonneville Dam must be released immediately unharmed.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(2) Chinook, coho, steelhead, walleye, carp, and shad may be taken by gill net for commercial purposes from the mainstem Columbia River, Zone 6, beginning 6:00 a.m. Monday, June 23 through 6:00 p.m. Wednesday, June 25, 2008 (60 hours).

(a) Seven inch minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, coho, sockeye, steelhead, walleye, carp, and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 48 and 60 inches in length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 42 and 60 inches in length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River, including the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods, subject to restrictions as specified in section 1 above except: Sales of sockeye salmon caught in the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are not allowed.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative cor-

rection 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08

635-042-0027

Summer Salmon Season

(1) Chinook salmon, coho salmon, sockeye salmon, white sturgeon and shad may be taken by gill net for commercial purposes in all of Zones 1 thru 5, from the mouth of the Columbia River upstream to a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock (as identified in OAR 635-042-0001).

(2) The open fishing periods in the area described in section (1) above are:

(a) Tuesday, June 24, from 7:00 p.m. to 5:00 a.m. Wednesday, June 25, 2008 (10 hours);

(b) Tuesday, July 1, from 7:00 p.m. to 5:00 a.m. Wednesday, July 2, 2008 (10 hours).

(3) It is *unlawful* to use a gill net having a mesh size less than 8 inches.

(4) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open.

(5) Allowable sales include Chinook, coho, sockeye, white sturgeon and shad. All steelhead must be released immediately.

(6) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-A, Cowlitz River, Kalama A, Lewis A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods identified above.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 47-2006(Temp), f. 6-20-06, cert. ef. 6-26-06 thru 7-31-06; DFW 51-2006(Temp), f. & cert. ef. 6-29-06 thru 7-31-06; DFW 57-2006(Temp), f. 7-5-06, cert. ef. 7-6-06 thru 7-31-06; DFW 63-2006(Temp), f. 7-14-2006, cert. ef. 7-16-06 thru 7-31-06; DFW 68-2006(Temp), f. 7-28-06, cert. ef. 7-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 52-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; DFW 63-2008(Temp), f. 6-13-08, cert. ef. 6-24-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08

635-042-0110

Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods:

(a) Monday, May 12 to Friday, May 16, 2008;

(b) Monday, May 19 to Friday, May 23, 2008;

(c) Tuesday, May 27 to Friday, May 30, 2008;

(d) Monday, June 2 to Friday, June 6, 2008;

(e) Monday, June 9 to Friday, June 13, 2008;

(f) Monday, June 16 to Friday, June 20, 2008;

(g) Monday, June 23, 2008; and

(h) Wednesday, June 25, 2008.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock.

(3) It is *unlawful* to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth.

(4) Only shad may be kept or sold. All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982 (Temp), f. & ef. 6-11-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; 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 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-

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20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; 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; Administrative correction 8-22-06; 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 18-2008(Temp), f. 2-27-08, cert. ef. 5-12-08 thru 11-7-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08

Rule Caption: Adopt Management Measures for the 2008 Sardine Fishery Consistent with Federal Regulations.

Adm. Order No.: DFW 69-2008(Temp)

Filed with Sec. of State: 6-24-2008

Certified to be Effective: 6-24-08 thru 12-20-08

Notice Publication Date:

Rules Amended: 635-004-0016

Subject: Amended rule adopts management measures for the 2008 commercial sardine fishery that are consistent with federal regulations, as approved by the Pacific Fishery Management Council in November 2007.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0016

Harvest Guideline

This rule incorporates, by reference, the sardine management measures for 2008 included in the **Pacific Council List of Decisions for the November 2007 Pacific Fishery Management Council Meeting**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660, as amended** to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 69-2008(Temp), f. & cert. ef. 6-24-08 thru 12-20-08

Rule Caption: Revised Nearshore Species Cumulative Trip Limits for the Commercial Nearshore Fishery.

Adm. Order No.: DFW 70-2008(Temp)

Filed with Sec. of State: 6-26-2008

Certified to be Effective: 7-1-08 thru 12-27-08

Notice Publication Date:

Rules Amended: 635-004-0033

Subject: This amended rule adjusts downward the cumulative trip limits for Black/Blue Rockfish permitted vessels, with or without a Nearshore Limited Entry endorsement, in fishing period four (July through August) from 1600 to 1200 pounds, and in fishing period five (September through October) from 1600 to 1000 pounds to immediately impact Blank/Blue rockfish harvest rates under the Black/Blue Rockfish and Nearshore permits. Current projections based on previously established harvest rates indicate a possible early attainment of commercial harvest caps and a possible early closure of the entire Nearshore fishery.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Shelf Rockfish;
- (b) Minor Slope Rockfish;
- (c) Black and Yellow Rockfish;
- (d) Brown Rockfish;
- (e) Calico Rockfish;
- (f) China Rockfish;

- (g) Copper Rockfish;
- (h) Gopher Rockfish;
- (i) Grass Rockfish;
- (j) Kelp Rockfish;
- (k) Olive Rockfish;
- (l) Treefish;
- (m) Black Rockfish;
- (n) Blue Rockfish;
- (o) Cabezon;
- (p) Canary Rockfish;
- (q) Greenling;
- (r) Tiger Rockfish;
- (s) Vermilion Rockfish;
- (t) Widow Rockfish;
- (u) Yelloweye Rockfish;
- (v) Yellowtail Rockfish;
- (w) Darkblotched Rockfish;
- (x) Pacific Ocean Perch;
- (y) Longspine Thornyhead;
- (z) Shortspine Thornyhead;
- (aa) Arrowtooth Flounder;
- (bb) Dover Sole;
- (cc) Petrale Sole;
- (dd) Rex Sole;
- (ee) Other Flatfish;
- (ff) Lingcod;
- (gg) Sablefish;
- (hh) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: 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. sericeus*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2008, the commercial harvest cap for black rockfish is 100.6 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2008, the commercial landing caps are:

- (a) Black rockfish and blue rockfish combined of 104.6 metric tons.
- (b) Other nearshore rockfish, 12.0 metric tons.
- (c) Cabezon, 31.3 metric tons.
- (d) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 600 pounds in period 1;
 - (b) 800 pounds in period 2;
 - (c) 1600 pounds in period 3;
 - (d) 1200 pounds in period 4;
 - (e) 1000 pounds in period 5; and
 - (f) 800 pounds in period 6.
- (7) In each period, no vessel may land more than:
- (a) 700 pounds of other nearshore rockfish, combined;
 - (b) 2,500 pounds of cabezon; or
 - (c) 450 pounds of greenling species.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; 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; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-

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03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; 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 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; Administrative Correction 1-24-08; DFW 70-2008(Temp), f. 6-26-08, cert. ef. 7-1-08 thru 12-27-08

Rule Caption: Salmon Fisheries in the Columbia River Mainstem and Tributaries.

Adm. Order No.: DFW 71-2008(Temp)

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08 thru 8-31-08

Notice Publication Date:

Rules Amended: 635-023-0128, 635-041-0076, 635-042-0025

Rules Suspended: 635-023-0128(T), 635-041-0076(T), 635-042-0022(T)

Subject: Amended rule 635-042-0025 implements a commercial sockeye salmon season in area 2S of the Columbia River from 12:00 noon to 6:00 p.m. on June 30, 2008. Amended rule 635-023-0128 closes mainstem Columbia River to retention of adult Chinook salmon effective at July 1, 2008 in the area from Bonneville Dam upstream to the Highway 395 Bridge, near Pasco, Washington; and modifies the sport sockeye salmon seasons. Amended rule 635-041-0076 adds two new fishing periods to the ongoing Treaty tribal gill net fishery in the mainstem Columbia River. Amendments also remove the minimum mesh size restriction. Modifications are consistent with action taken June 27, 2008 by the Columbia River Compact agencies of Oregon and Washington in coordination with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0128

Summer Sport Fishery

(1) The **2008 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 **2008 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2008 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through July 31, 2008, the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to I-5 Bridge is open to the retention of jack Chinook salmon and adipose fin-clipped steelhead;

(b) Effective June 21 through June 28, 2008 the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult and jack Chinook salmon and sockeye salmon;

(c) Effective June 16 through June 30, 2008, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult Chinook salmon;

(d) Effective June 21 through July 6, 2008, or until the harvest guideline is achieved; the mainstem Columbia River from the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Oregon/Washington border is open to the retention of sockeye salmon; and

(e) Effective June 16 through July 31, 2008, the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Oregon/Washington border is open to the retention of jack Chinook salmon.

(f) The daily bag limit for adult Chinook salmon, all sockeye, and adipose fin-clipped steelhead combined is two fish; 5 jack Chinook salmon per day, 2 daily Chinook jack limits allowed in possession.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08

635-041-0076

Summer Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Monday, June 16, 2008 until further notice.

(a) Gear is restricted to subsistence fishing gear: hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Allowable sales include Chinook, coho, sockeye, steelhead, wall-eye, carp, and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 48 and 60 inches in length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 42 and 60 inches in length taken from the Bonneville Pool may be kept for subsistence use. White sturgeon caught in subsistence fisheries downstream of Bonneville Dam must be released immediately unharmed.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(2) Chinook, coho, steelhead, walleye, carp, and shad may be taken by gill net for commercial purposes from the mainstem Columbia River, Zone 6 during the following periods: 6:00 a.m. Monday, June 23 through 6:00 p.m. Wednesday, June 25, 2008 (60 hours); 6:00 a.m. Tuesday, July 1 through 6:00 p.m. Thursday, July 3, 2008 (60 hours); and 6:00 a.m. Tuesday, July 8 through 6:00 p.m. Thursday, July 10, 2008 (60 hours).

(a) No minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, coho, sockeye, steelhead, wall-eye, carp, and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 48 and 60 inches in length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 42 and 60 inches in length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River, including the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods, subject to restrictions as specified in section 1 above.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by tangle net for commercial purposes from the west powerlines on Hayden Island upstream to Beacon Rock (part of Zone 4 and all of Zone 5) during the following periods:

Tuesday, April 1, 2008 from 1:00 p.m. to 11:00 p.m. (10 hours).

Tuesday, April 8, 2008 from 7:00 a.m. to 11:00 p.m. (16 hours).

Tuesday, April 15, 2008 from 3:00 a.m. to 3:00 p.m. (12 hours).

(a) Individual fishing periods will not exceed. Fishing periods may occur from one hour after sunset on Mondays until one hour prior to sunrise on Wednesdays.

(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 gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 8 inches or more than 9-3/4 inches.

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(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. Nets authorized for this fishery, and nets with a mesh size of ≤ 2 inches or ≥ 9 inches are not required to be properly stored. 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 headline) 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 (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) All salmon and 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 ODFW and WDFW 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 in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2006 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2007 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2006. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-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 Washougal River and Sandy River sanctuaries are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 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. & 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 7-31-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 7-31-05; 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. & cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & 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. & cert. ef. 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. & cert. ef. 3-31-08, cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. & cert. ef. 4-7-08, cert. ef. 4-8-08 thru 9-27-08; DFW 34-2008(Temp), f. & cert. ef. 4-14-08, cert. ef. 4-15-08 thru 9-27-08; Suspended by DFW 71-2008(Temp), f. & cert. ef. 6-27-08, cert. ef. 6-28-08 thru 8-31-08

635-042-0025

Sockeye Season

(1) Sockeye salmon, shad, sturgeon, and Chinook salmon may be taken for commercial purposes from the Columbia River fishery below Bonneville Dam in Area 2S from 12:00 noon to 6:00 p.m. June 30, 2008.

(2) For the purpose of this rule, Area 2S is the area of the Columbia River from a true north/south line through Light #50 near the mouth of the Sandy River upstream to the commercial fishing boundary near Beacon Rock.

(3) During the season provided in section (1) of this rule, it is *unlawful* to use other than a single-wall floater gill net or to use nets with slackers or stringers, aprons, or trammels. Mesh size shall not exceed 4-1/2 inches.

(4) All fish not listed in section (1) of this rule must be immediately returned to the water and those alive released unharmed.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 27-1984(Temp), f. & cert. ef. 6-22-84; FWC 28-1985 (Temp), f. & cert. ef. 6-21-85; FWC 24-1986, f. & cert. ef. 6-20-86; FWC 30-1987, f. & cert. ef. 6-19-87; FWC 32-1987(Temp), f. & cert. ef. 6-23-87; FWC 35-1987(Temp), f. & cert. ef. 6-29-87; FWC 48-1988, f. & cert. ef. 6-21-88; FWC 49-1988(Temp), f. & cert. ef. 6-23-88; DFW 36-2000(Temp), f. & cert. ef. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; Administrative correction 6-21-01; DFW 51-2001(Temp), f. & cert. ef. 6-22-01, cert. ef. 6-25-

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01 thru 6-28-01; DFW 54-2001(Temp), f. & cert. ef. 6-27-01 thru 6-28-01; DFW 63-2004(Temp), f. 6-29-04, cert. ef. 6-30-04 thru 7-3-04; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08

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

Rule Caption: Three open Periods Added to Columbia River Sport Sturgeon Fishery Downstream of Wauna Power Lines.

Adm. Order No.: DFW 72-2008(Temp)

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-10-08 thru 12-31-08

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: Amend rule to add three new periods for the retention of white sturgeon in the Columbia River from the Wauna power lines downstream to the mouth of Buoy 10, including Youngs Bay. The three periods are: July 10–12, July 17–19; and July 26–27. Revision is consistent with Joint State Action taken by the states of Oregon and Washington on June 27, 2008.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2008 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 **2008 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon four days per week, Thursdays through Sundays, during the following periods:

- (a) January 1 through July 31; and
- (b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

- (a) January 1 through April 30;
- (b) May 10 through June 24;
- (c) July 10 through July 12;
- (d) July 17 through July 19; and
- (e) July 26 through July 27.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 9; June 25 through July 9; July 13 through July 16; July 20 through July 25; and July 28 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42–60 inches in overall length may be retained.

(7) During the fishing period as identified in subsections (4)(b) through (4)(e) of this rule, only white sturgeon between 45–60 inches in overall length may be retained.

(8) The Columbia River and tributaries between The Dalles Dam and John Day Dam are closed to the retention of sturgeon effective 12:01 a.m. Saturday, March 15, 2008.

(9) The Columbia River and tributaries upriver from John Day Dam upstream to McNary Dam is closed to the retention of sturgeon effective 12:01 a.m. Wednesday, March 26, 2008.

(10) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(11) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07,

Rule Caption: In-season Modifications to Ocean Sport Rockfish and Other Marine Species Seasons.

Adm. Order No.: DFW 73-2008(Temp)

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-7-08 thru 12-31-08

Notice Publication Date:

Rules Amended: 635-039-0090

Subject: Amended rule reduces the aggregate daily sport bag limit for rockfish; cabezon, skates and “other fish” marine species from six to five, as listed under “Marine Fish:” on page 6 of the 2008 Oregon Sport Ocean Regulations for Salmon, Halibut and Other Marine Fish Species” published May 2008 and page 98 of the Oregon Sport Fishing Regulations booklet. Rule modifications also close the ocean for these species and lingcod outside of 20-fathoms effective July 7, 2008.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-039-0090

Inclusions and Modifications

(1) The **2008 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 **2008 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a “harvest target” is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish and canary rockfish that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2008 are specified in the Pacific Council Decisions or News documents dated June and November, 2007.

(b) Harvest targets for yelloweye rockfish and canary rockfish effective at the start of the Oregon sport fishery in 2008 are:

- (A) Yelloweye rockfish, 3.3 metric tons.
- (B) Canary rockfish, 6.6 metric tons.

(c) Harvest targets for yelloweye rockfish and canary rockfish may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3)(a) 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.

(b) For 2008, the sport harvest cap for black rockfish is 318 metric tons.

(4) 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. serriceps*).

(5) For the purposes of this rule a “sport landing cap” is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2008 the sport landing caps are:

- (a) Black rockfish and blue rockfish combined, 359 metric tons.
- (b) Other nearshore rockfish, 11.3 metric tons.
- (c) Cabezon, 15.8 metric tons.
- (d) Greenling, 5.2 metric tons.

(6) In addition to the regulations for Marine Fish in the **2008 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2008:

(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 **2008 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 5 fish daily bag limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

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(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 sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Council Decisions; **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a), (6)(b) and (6)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through July 6, 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. Ocean waters are closed for species in subsections (6)(a) and (6)(b) during July 7 through December 31, outside of the 20 fathom curve (defined by latitude and longitude) as shown on **Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189**, dated September 29, 2006. Ocean waters are closed for species in subsection (6)(c) during July 7 through December 31, 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.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 390. Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

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

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef.

12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08

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Rule Caption: Sport Chinook Fisheries on the Wallowa and Imnaha Rivers.

Adm. Order No.: DFW 74-2008(Temp)

Filed with Sec. of State: 7-3-2008

Certified to be Effective: 7-4-08 thru 9-1-08

Notice Publication Date:

Rules Amended: 635-021-0090

Rules Suspended: 635-021-0090(T)

Subject: This amended rule allows sport anglers the opportunity to harvest adipose fin-clipped adult and jack Chinook salmon, in excess of ODFW's natural production needs, in the Wallowa and Imnaha rivers. These fisheries are scheduled for the period Friday, July 4 through Sunday, July 13, 2008.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-021-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Powder River upstream from Hughes Lane Bridge near Baker City to Mason Dam is open to angling for spring Chinook salmon from May 31 to September 1, 2008: The spring Chinook bag limit is 2 per day.

(3) The Wallowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from July 4–13, 2008.

(a) The daily bag limit is one adipose fin-clipped adult Chinook and five adipose fin-clipped jacks; 2 daily jack limits in possession (it is illegal to continue fishing for jack Chinook once the adult bag limit is met).

(b) All other statewide salmon gear restrictions provided in the 2008 Oregon Sport Fishing Regulations apply.

(4) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from July 4–13, 2008.

(a) The daily bag limit is one adipose fin-clipped adult Chinook and five adipose fin-clipped jacks; 2 daily jack limits in possession (it is illegal to continue fishing for jack Chinook once the adult bag limit is met).

(b) All other statewide salmon gear restrictions provided in the 2008 Oregon Sport Fishing Regulations apply.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08

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Rule Caption: Commercial Summer Salmon Gill Net Fisheries in the Columbia River.

Adm. Order No.: DFW 75-2008(Temp)

Filed with Sec. of State: 7-3-2008

Certified to be Effective: 7-7-08 thru 7-31-08

Notice Publication Date:

Rules Amended: 635-042-0027

Rules Suspended: 635-042-0027(T)

ADMINISTRATIVE RULES

Subject: Amended rule adds a ten hour fishing period to the commercial summer salmon gill net season in the Columbia River mainstem, zones 1 through 5. Allowable sales include Chinook, coho, and sockeye salmon, white sturgeon and shad. Modifications are consistent with action taken July 3, 2008 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0027

Summer Salmon Season

(1) Chinook salmon, coho salmon, sockeye salmon, white sturgeon and shad may be taken by gill net for commercial purposes in all of Zones 1 thru 5, from the mouth of the Columbia River upstream to a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock (as identified in OAR 635-042-0001).

(2) The open fishing periods in the area described in section (1) above are: Tuesday, June 24, from 7:00 p.m. to 5:00 a.m. Wednesday, June 25, 2008 (10 hours); Tuesday, July 1, from 7:00 p.m. to 5:00 a.m. Wednesday, July 2, 2008 (10 hours); and Monday, July 7, from 7:00 p.m. to 5:00 a.m. Tuesday, July 8, 2008 (10 hours).

(3) It is *unlawful* to use a gill net having a mesh size less than 8 inches.

(4) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open.

(5) Allowable sales include Chinook, coho, sockeye, white sturgeon and shad. All steelhead must be released immediately.

(6) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-A, Cowlitz River, Kalama A, Lewis A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods identified above.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 47-2006(Temp), f. 6-20-06, cert. ef. 6-26-06 thru 7-31-06; DFW 51-2006(Temp), f. & cert. ef. 6-29-06 thru 7-31-06; DFW 57-2006(Temp), f. 7-5-06, cert. ef. 7-6-06 thru 7-31-06; DFW 63-2006(Temp), f. 7-14-2006, cert. ef. 7-16-06 thru 7-31-06; DFW 68-2006(Temp), f. 7-28-06, cert. ef. 7-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 52-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; DFW 63-2008(Temp), f. 6-13-08, cert. ef. 6-24-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 75-2008(Temp), f. 7-3-08, cert. ef. 7-7-08 thru 7-31-08

Rule Caption: Sport Chinook Fisheries on the Willowa and Imnaha Rivers.

Adm. Order No.: DFW 76-2008(Temp)

Filed with Sec. of State: 7-9-2008

Certified to be Effective: 7-9-08 thru 9-1-08

Notice Publication Date:

Rules Amended: 635-019-0090

Subject: This amended rule allows sport anglers the opportunity to harvest adipose fin-clipped adult and jack Chinook salmon, in excess of ODFW's natural production needs, in the Willowa and Imnaha rivers. These fisheries are scheduled for the period Friday, July 4 through Sunday, July 13, 2008.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Willowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from July 4-13, 2008.

(a) The daily bag limit is one adipose fin-clipped adult Chinook and five adipose fin-clipped jacks; 2 daily jack limits in possession (it is illegal to continue fishing for jack Chinook once the adult bag limit is met).

(b) All other statewide salmon gear restrictions provided in the 2008 Oregon Sport Fishing Regulations apply.

(3) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from July 4-13, 2008.

(a) The daily bag limit is one adipose fin-clipped adult Chinook and five adipose fin-clipped jacks; 2 daily jack limits in possession (it is illegal to continue fishing for jack Chinook once the adult bag limit is met).

(b) All other statewide salmon gear restrictions provided in the 2008 Oregon Sport Fishing Regulations apply.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08

Rule Caption: Temporary Rule Mistakenly Amended is Restored to Its Original Language.

Adm. Order No.: DFW 77-2008(Temp)

Filed with Sec. of State: 7-9-2008

Certified to be Effective: 7-9-08 thru 9-1-08

Notice Publication Date:

Rules Amended: 635-021-0090

Rules Suspended: 635-021-0090(T)

Subject: This rule is amended in order to restore the rule to its previous form, removing language added by mistake. Amendments have since been made to the correct division in a separate action.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-021-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Powder River upstream from Hughes Lane Bridge near Baker City to Mason Dam is open to angling for spring Chinook salmon from May 31 to September 1, 2008:

(a) The spring Chinook bag limit is 2 per day.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07

ADMINISTRATIVE RULES

thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08

Rule Caption: Recreational Sturgeon Fishery Closes in Bonneville Pool.

Adm. Order No.: DFW 78-2008(Temp)

Filed with Sec. of State: 7-9-2008

Certified to be Effective: 7-12-08 thru 12-31-08

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: Amended rule closes the recreational sturgeon fishery in the Bonneville Pool between Bonneville Dam and The Dalles Dam effective at 12:01 a.m. Saturday, July 12, 2008. Revisions are consistent with Joint State Action taken by the Columbia River Compact agencies of Oregon and Washington on July 8, 2008.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The 2008 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 2008 Oregon Sport Fishing Regulations.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon four days per week, Thursdays through Sundays, during the following periods:

- (a) January 1 through July 31; and
- (b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

- (a) January 1 through April 30;
- (b) May 10 through June 24;
- (c) July 10 through July 12;
- (d) July 17 through July 19; and
- (e) July 26 through July 27.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 9; June 25 through July 9; July 13 through July 16; July 20 through July 25; and July 28 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42 60 inches in overall length may be retained.

(7) During the fishing period as identified in subsections (4)(b) through (4)(e) of this rule, only white sturgeon between 45 60 inches in overall length may be retained.

(8) The Columbia River and tributaries between Bonneville Dam and The Dalles Dam are closed to retention of sturgeon effective 12:01 a.m. Saturday, July 12, 2008.

(9) The Columbia River and tributaries between The Dalles Dam and John Day Dam are closed to the retention of sturgeon effective 12:01 a.m. Saturday, March 15, 2008.

(10) The Columbia River and tributaries upriver from John Day Dam upstream to McNary Dam is closed to the retention of sturgeon effective 12:01 a.m. Wednesday, March 26, 2008.

(11) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(12) 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

Rule Caption: Allow commercial sales of dressed salmon and steelhead by Columbia River Treaty tribal fishers.

Adm. Order No.: DFW 79-2008(Temp)

Filed with Sec. of State: 7-10-2008

Certified to be Effective: 7-10-08 thru 12-31-08

Notice Publication Date:

Rules Amended: 635-006-0212, 635-006-0215, 635-006-0225

Rules Suspended: 635-006-0225(T)

Subject: These amended rules allow commercial sales of gilled and gutted Columbia River salmon and steelhead caught by Treaty tribal members to wholesale fish dealers, cannerys, and buyers. Amendments also require wholesale fish dealers, cannerys and buyers to report in round weights on the Fish Receiving Ticket using a conversion factor of 1.17.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-0212

Fish Receiving Ticket — Salmon

For all salmon, the following requirements apply in addition to those listed in OAR 635-006-0210:

(1) Fish receiving tickets shall be completed at time of landing and the original copy forwarded within four consecutive days following the landing to the Oregon Department of Fish and Wildlife.

(2) For troll-caught salmon, fish receiving tickets shall show the number of days fished during the trip in which the salmon were caught.

(3) It is lawful for licensed wholesale fish dealers, cannerys, or buyers to purchase from tribal fishers, referred to in OAR 635-041-0005, gilled and gutted Columbia River salmon lawfully taken by treaty Indians during commercial fishing seasons. The licensed wholesale dealer must submit round weights on the Fish Receiving Ticket by multiplying the weights of gilled and gutted salmon by the conversion factor listed in OAR 635-006-0215 for tribal Columbia River salmon and steelhead.

Stat. Auth.: ORS 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 44-2006(Temp), f. & cert. ef. 6-19-06 thru 12-15-06; Administrative correction 12-16-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08

635-006-0215

Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish cannerys, or shellfish cannerys receiving food fish or shellfish from licensed commercial fishermen or bait fishermen;

(b) Limited fish sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all fish receiving tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. The following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying the below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted — 1.15

(ii) Gilled, gutted, and headed — 1.30

(B) Tribal Columbia River salmon and steelhead trout: Gilled and gutted — 1.17

(C) Halibut:

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- (i) Gilled and gutted — 1.15
- (ii) Gilled, gutted, and headed — 1.35
- (D) Sablefish, gutted and headed — 1.60
- (E) Pacific whiting:
 - (i) Fillet — 2.86
- (ii) Headed and gutted — 1.56
- (iii) Surimi — 6.25
- (F) Razor Clams, shelled and cleaned. — 2.0
- (G) Scallops, shelled and cleaned — 12.2
- (H) Thresher shark — 2.0
- (I) Skates — 2.6
- (J) Lingcod:
 - (i) Gilled and gutted — 1.1
 - (ii) Gilled, gutted and headed — 1.5
- (K) Spot prawn, tails — 2.24

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent;

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5 percent.

(C) All other food fish and shellfish, 1.09 percent until the first Emergency Board hearing of 1993 and 1.25 percent, thereafter.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Oregon Department of Fish and Wildlife on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.119 & 508.530

Stats. Implemented: ORS 506.129, 508.535 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08

635-006-0225

Purchase, Record, Report, and Sale of Steelhead Trout and Walleye from Treaty Indian Fisheries

(1) Steelhead trout and walleye lawfully taken by treaty Indians during commercial fishing seasons may be purchased by licensed wholesale fish dealers, cannerys, or buyers pursuant to restrictions set forth in sections (2) through (5) of this rule. In addition, steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased and/or possessed by any individual pursuant to restrictions set forth in section (6) of this rule.

(2) The wholesale fish dealer, cannery, or buyer, shall at the time of purchase, enter the purchase of steelhead and walleye on a Department of Fish and Wildlife Columbia River Fish Receiving Ticket. Information required to be entered on the fish receiving ticket shall be the same as required by OAR 635-006-0210 and 635-006-0212 for each purchase of food fish.

(3) The record keeping and reporting requirements for food fish as set forth in OAR 635-006-0200 through 635-006-0215 shall apply to all steelhead trout and walleye purchases. The round weights of all gilled and gutted steelhead trout must be converted by the licensed wholesale fish dealer, cannery, or buyer by using the conversion factor listed in 635-006-0215 for Tribal Columbia River salmon and steelhead trout.

(4) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead and walleye shall be maintained by licensed wholesale fish dealers, cannerys, or buyers for a period of three years and shall be subject to inspection by the Director, the Director's authorized agent, or the State Police. Such record of sales shall include as a minimum:

(5) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead and walleye shall be maintained by licensed wholesale fish dealers, cannerys, or buyers for a period of three years and shall be subject to inspection by the Department or the State Police. Such record of sales shall include as a minimum:

(a) Name and address of each person to whom either steelhead or walleye are sold;

(b) Quantity in pounds of each sale identified as whole or round weight;

(c) Date of each delivery.

(6) It is *unlawful* for any wholesale fish dealer, cannery, or buyer in possession of legally purchased steelhead or walleye from treaty Indians to sell or distribute such fish in Oregon except to another wholesale fish dealer, cannery, or buyer.

(7) Steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased from a treaty Indian and/or possessed by any individual so long as said fish are accompanied by a written document listing treaty Indian taker's name, tribal enrollment number, number of fish, approximate weight of each fish, date and location where taken, date of sale, and purchaser's name. It is *unlawful* for any individual other than a treaty Indian to sell steelhead trout or walleye. The provisions in this section apply to individuals other than licensed wholesale fish dealers, cannerys and buyers.

Stat. Auth.: ORS 506.119, 508.530 & 509.031

Stats. Implemented: ORS 498.022, 506.129, 508.535 & 508.550

Hist.: FWC 39, f. & ef. 1-23-76, Renumbered from 625-040-0150, Renumbered from 635-036-0595; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 41-1995, f. 5-23-95, cert. ef. 5-24-95; FWC 51-1997(Temp), f. & cert. ef. 8-27-97; DFW 73-1998, f. & cert. ef. 8-28-98; DFW 32-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08

Rule Caption: Treaty Indian Summer Salmon Fisheries in the Columbia River and Tributaries.

Adm. Order No.: DFW 80-2008(Temp)

Filed with Sec. of State: 7-10-2008

Certified to be Effective: 7-10-08 thru 8-31-08

Notice Publication Date:

Rules Amended: 635-041-0076

Rules Suspended: 635-041-0076(T)

Subject: Amended rule extends the Tribal Indian commercial gill net salmon fishery in the Columbia River and tributaries by adding two new fishing periods. Modifications are consistent with action taken July 10, 2008 by the Columbia River Compact agencies of Oregon and Washington in concert with the Columbia River Inter-Tribal Fish Commission.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0076

Summer Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Monday, June 16, 2008 until further notice.

(a) Gear is restricted to subsistence fishing gear: hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Allowable sales include Chinook, coho, sockeye, steelhead, walleye, carp, and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 48 and 60 inches in length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 42 and 60 inches in length taken from the Bonneville Pool may be kept for subsistence use. White sturgeon caught in subsistence fisheries downstream of Bonneville Dam must be released immediately unharmed.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(2) Chinook, coho, sockeye, steelhead, walleye, carp, and shad may be taken by gill net for commercial purposes from the mainstem Columbia River, Zone 6 during the following periods:

6:00 a.m. Monday, June 23 through 6:00 p.m. Wednesday, June 25, 2008 (60 hours);

6:00 a.m. Tuesday, July 1 through 6:00 p.m. Thursday, July 3, 2008 (60 hours);

6:00 a.m. Tuesday, July 8 through 6:00 p.m. Thursday, July 10, 2008 (60 hours);

6:00 a.m. Tuesday, July 15 through 6:00 p.m. Thursday, July 17, 2008 (60 hours); and

6:00 a.m. Tuesday, July 22 through 6:00 p.m. Thursday, July 24, 2008 (60 hours).

(a) No minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, coho, sockeye, steelhead, walleye, carp, and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 48 and 60 inches in length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 42 and 60 inches in length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River, including the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are allowed dur-

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ing those days and hours when the tributaries are open under lawfully enacted tribal fishing periods, subject to restrictions as specified in section 1 above.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08

Rule Caption: Ocean sport Pacific halibut closure from Leadbetter Point, Washington to Cape Falcon, Oregon

Adm. Order No.: DFW 81-2008(Temp)

Filed with Sec. of State: 7-11-2008

Certified to be Effective: 8-2-08 thru 9-30-08

Notice Publication Date:

Rules Amended: 635-039-0085

Subject: Amends rule to close the sport fishery for Pacific halibut in the area between Leadbetter Point, Washington and Cape Falcon, Oregon, at 11:59 p.m. on August 2, 2008 when the 2008 season total quota of 18,762 pounds is projected to have been taken. This rule is consistent with regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2008 Oregon recreational fishery for Pacific halibut.

Rules Coordinator: Therese Kucera—(503) 947-6033

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 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and to the extent they are consistent with Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) Volume 73, Number 46, dated March 7, 2008 and as amended by Federal Regulations.

(2) Effective 11:59 p.m., Sunday August 2, 2008 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) is closed to the retention of Pacific halibut.

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

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08

Department of Forestry

Chapter 629

Rule Caption: Harvest on intermediate risk slopes to be treated same as harvest on substantial risk slopes.

Adm. Order No.: DOF 4-2008(Temp)

Filed with Sec. of State: 7-11-2008

Certified to be Effective: 7-18-08 thru 1-13-09

Notice Publication Date:

Rules Amended: 629-623-0400

Rules Suspended: 629-623-0500

Subject: The proposed action adds Intermediate Down Slope Public Safety to the existing rule that imposes timber harvest restrictions in areas with Substantial Down Slope Public Safety Risk and suspends the Intermediate Down Slope Public Safety Risk rule, as it does not meet the intention of ORS 527.710(10) with respect to reducing the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-623-0400

Restriction of Timber Harvesting — Substantial and Intermediate Down Slope Public Safety Risk

(1) Operators shall not remove trees from high landslide hazard locations with substantial or intermediate downslope public safety risk unless a geotechnical report demonstrates to the State Forester that any landslides that might occur will not be directly related to forest practices because of very deep soil or other site-specific conditions. Removal of dead or diseased trees or trees from sites that have already failed is allowed if the operator demonstrates to the State Forester that the operation results in no increased overall downslope public safety risk.

(2) Operators shall leave a sufficient number and arrangement of trees adjacent to high landslide hazard locations to reduce the likelihood of trees retained in these locations blowing down.

Stat. Auth.: ORS 527.710(10)

Stats. Implemented: ORS 527.630(5) & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 4-2008(Temp), f. 7-11-08, cert. ef. 7-18-08 thru 1-13-09

629-623-0500

Timber Harvesting — Intermediate Down Slope Public Safety Risk

(1) The purpose of this rule is to manage canopy closure on high landslide hazard locations with intermediate downslope public safety risk.

(2) For harvesting operations that remove all or most of the largest trees, operators shall ensure that no more than half the area of high landslide hazard locations on a single ownership within the drainage or hillslope directly above the affected structure or road are in a 0 to 9 year-old age class or with reduced canopy closure in other age classes;

(3) For thinning or partial cutting operations, operators shall retain a vigorous stand that allows rapid canopy closure.

(4) Landowners shall use reforestation and stand management practices that result in rapid canopy closure.

(5) For timber harvesting operations, landowners shall describe in the written plan required by OAR 629-623-0700 how they will manage the high landslide hazard locations on their ownership within the affected drainage or hillslope with intermediate downslope public safety risk.

Stat. Auth.: ORS 527.710(10)

Stats. Implemented: ORS 527.630(5) & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; Suspended by DOF 4-2008(Temp), f. 7-11-08, cert. ef. 7-18-08 thru 1-13-09

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

Rule Caption: Requirement that certain facilities report the number of restraint and seclusion uses to the Division.

Adm. Order No.: MHS 5-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 6-1-2008

Rules Adopted: 309-033-0735

Rules Amended: 309-032-1190, 309-033-0710

Rules Repealed: 309-032-1190(T), 309-033-0735(T)

Subject: The Addictions and Mental Health (AMH) Division is adopting rules to comply with the requirements of ORS Chapter 164 (SB 265, Enrolled, 2007 Session). The bill requires that certain facilities must report the number of seclusion and the number of restraint incidents to AMH each calendar year.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-032-1190

Special Treatment Procedures

(1) Providers shall have policies and procedures and a quality management system to:

(a) Monitor the use of special treatment procedures to assure that children are safeguarded and their rights are always protected; and

(b) Review and approve experimental practices other than medications that are outside usual and customary clinical practices and research projects. Experimental practices and research require review and approval by the Division Institutional Review Board.

(c) Report the number of seclusions, the number of restraints, and the total number of patient days to the Division within 30 days of the end of each calendar quarter.

(2) Chemical restraint shall not be used. Medication shall not be used as a restraint, but shall be prescribed and administered according to acceptable nursing, medical, and pharmaceutical practices to treat symptoms of serious emotional disorders.

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(3) Mechanical restraint shall be used only in a Sub-Acute program specifically authorized for such use in writing by the Division. Sub-Acute programs that are authorized to use mechanical restraint shall adhere to the standards for special treatment procedures as described in this section and other specific conditions as required by the Division.

(4) The provider shall establish a Special Treatment Procedures Committee or designate this function to an already established Quality Management Committee. Committee membership shall minimally include a staff person with designated clinical leadership responsibilities, the person responsible for staff training in crisis intervention procedures, and other clinical personnel not directly responsible for authorizing the use of special treatment procedures with individual children. The committee shall:

(a) Meet at least monthly and shall report in writing to the provider's Quality Management Committee at least quarterly regarding the committee's activities, findings and recommendations;

(b) Conduct individual and aggregate review of incidents of seclusion and manual restraint;

(c) Conduct individual and aggregate review of incidents of isolation for more than five hours in five days or a single episode of two hours;

(d) Analyze special treatment procedures to determine opportunities to reduce their use, increase the use of alternatives, improve the quality of care of children receiving services, and recommend whether follow up action is needed; and

(e) Review and update special treatment procedures policies and procedures minimally annually.

(5) Obtain informed consent upon admission from the parent(s) or guardian in the use of special treatment procedures. Communicate both verbally and in writing the information to the parent(s) or guardian and the child in a developmentally appropriate manner.

(6) General Conditions of Manual Restraint and Seclusion.

(a) There shall be a systematic approach, documented in written policies and procedures to the treatment of children which employs individualized, preplanned alternatives to manual restraint and seclusion;

(b) Manual restraint and seclusion shall only be used in an emergency to prevent immediate injury to a child who is in danger of physically harming him or her self or others in situations such as the occurrence of, or serious threat of violence, personal injury or attempted suicide;

(c) Any use of manual restraint and seclusion shall respect the dignity and civil rights of the child;

(d) A child shall be manually restrained or secluded only when clinically indicated and alternatives are not sufficient to protect the child or others as determined by the interdisciplinary team responsible for the child's individual care plan;

(e) The use of manual restraint and seclusion shall be directly related to the child's individual symptoms and behaviors and the acuity of the symptoms and behaviors. Manual restraint and seclusion shall not be used as punishment, discipline, or for the convenience of staff;

(f) Manual restraint and seclusion shall only be used for the length of time necessary for the child to resume self-control and prevent harm to the child or others;

(g) If manual restraint and seclusion are considered as part of the child's individualized safety needs, then alternatives to manual restraint and seclusion shall be identified and made a part of the child's individual plan of care. The individual plan of care shall outline use of this procedure, and goals addressing therapeutic alternatives and interventions to reduce its use; and

(h) Each incident of manual restraint and seclusion shall be referred to the Special Treatment Procedures Committee.

(A) Manual Restraint:

(i) Each incident of manual restraint shall be documented in the clinical record. The documentation shall specify less restrictive methods attempted prior to the manual restraint, the required authorization, length of time the manual restraint was used, the events precipitating the manual restraint, assessment of appropriateness of the manual restraint based on threat of harm to self or others, assessment of physical injury, and the child's response to the intervention;

(ii) A minimum of two staff shall implement a manual restraint. If in the event of an emergency a single staff manual restraint has occurred, the provider's on-call administrator shall immediately review the intervention;

(iii) A manual restraint intervention that exceeds 30 minutes shall require a documented review and authorization by a QMHP, interventions which exceed one hour shall require a documented review and authorization by a psychiatrist or designee; and

(iv) A designated individual with clinical leadership responsibilities shall review the manual restraint documentation prior to the end of the shift in which the intervention occurred.

(v) If incidents of manual restraint used with an individual child cumulatively exceed five hours in five days or a single episode of one hour, the psychiatrist or designee shall within 24 hours convene by phone or in person individual(s) in the program with designated clinical leadership responsibilities to review the child's individual plan of care and/or behavior

management interventions and make necessary adjustments. This information shall be documented in the child's clinical record and referred to the Special Treatment Procedures Committee.

(B) Seclusion:

(i) Each episode of seclusion shall be authorized immediately after initiation of the episode in the child's clinical record by the psychiatrist. A general order for the use of seclusion is not sufficient. The psychiatrist may delegate the authority to authorize seclusion to QMHP staff who have satisfactorily completed a Division-approved crisis intervention training program;

(ii) Written orders for seclusion are limited to two hours for children age nine and older and one hour for children under age nine. The psychiatrist may extend the original order for one additional hour for children under age nine to two hours total, and the original order for two hours for children age nine and older up to six hours total;

(iii) Visual monitoring of a child in seclusion shall occur and be documented at least every fifteen minutes or more often as clinically indicated;

(iv) The child's right to retain personal possessions and personal articles of clothing may be suspended during a seclusion only when necessary to ensure the safety of the child or others. Articles that a child might use to inflict self-injury must be removed;

(v) The child shall have regular meals, bathing, and use of the bathroom during seclusion and their provision shall be documented in the child's clinical record;

(vi) Each incident of seclusion shall be documented in the child's clinical record. The documentation shall include the clinical justification for use, the written order by the authorized individual, the less restrictive methods attempted, length of time the seclusion was used, the precipitating events, assessment of appropriateness of the intervention based on threat of harm to self or others, assessment of physical injury, and the child's response to the intervention; and

(vii) If incidents of seclusion used with an individual child cumulatively exceed five hours in five days or a single episode of more than two hours for children age nine and older and more than one hour for children under age nine, the psychiatrist or designee shall within 24 hours convene by phone or in person individual(s) in the program with designated clinical leadership responsibilities to review the child's individual plan of care and/or behavior management interventions and make necessary adjustments. This information shall be documented in the child's clinical record and referred to the Special Treatment Procedures Committee.

(7) Application for the use of seclusion. Any facility or program in which the use of seclusion occurs shall be authorized by the Division for this purpose and shall meet the following requirements:

(a) A facility or program seeking authorization shall submit a written application to the Division;

(b) Application shall include a comprehensive plan for the need for and use of seclusion of admitted children and copies of the facility's policies and procedures for the utilization and monitoring of seclusion including a statistical analysis of the facility's actual use of seclusion, physical space, staff training, staff authorization, record keeping and quality management practices;

(c) The Division shall review the application and, after a determination that the written application is complete and satisfies all applicable requirements, shall provide for a review of the facility by authorized Division staff;

(d) The Division shall have access to the records of the facility's clients, the physical plant of the facility, the employees of the facility, the professional credentials of employees, and shall have the opportunity to observe fully the treatment and seclusion practices employed by the facility;

(e) After the review, the Assistant Administrator or designee shall approve or disapprove the facility's application and if, approved, shall certify the facility based on the determination of the facility's compliance with all applicable requirements for the seclusion of children;

(f) If disapproved the facility shall be provided with specific recommendations and have the right of appeal to the Division; and

(g) Certification of a facility shall be effective for a maximum of three years and may be renewed thereafter upon approval of a renewal application.

(8) Structural and physical requirements for seclusion. Any facility or program in which the use of seclusion occurs shall be certified by the Division for this purpose. A provider seeking this certification under these rules shall have available at least one room that meets the following specifications and requirements:

(a) The room must be of adequate size to permit three adults to move freely and allows for one adult to lie down. Any newly constructed room shall be no less than 64 square feet;

(b) The door must open outward and contain a port of shatterproof glass or plastic through which the entire room may be viewed from outside;

(c) The room shall contain no protruding, exposed, or sharp objects;

ADMINISTRATIVE RULES

(d) The room shall contain no furniture. A fireproof mattress or mat shall be available for comfort;

(e) Any windows shall be made of unbreakable or shatterproof glass, or plastic. Non-shatterproof glass shall be protected by adequate climb-proof screening;

(f) There shall be no exposed pipes or electrical wiring in the room. Electrical outlets shall be permanently capped or covered with a metal shield secured by tamper-proof screws. Ceiling and wall lights shall be recessed and covered with safety glass or unbreakable plastic. Any cover, cap or shield shall be secured by tamper-proof screws;

(g) The room shall meet State Fire Marshal fire, safety, and health standards. If sprinklers are installed, they shall be recessed and covered with fine mesh screening. If pop-down type, sprinklers must have break-away strength of under 80 pounds. In lieu of sprinklers, combined smoke and heat detector shall be used with similar protective design or installation;

(h) The room shall be ventilated, kept at a temperature no less than 64°F and no more than 85°F. Heating and cooling vents shall be secure and out of reach;

(i) The room shall be designed and equipped in a manner that would not allow a child to climb off the ground;

(j) Walls, floor and ceiling shall be solidly and smoothly constructed, to be cleaned easily, and have no rough or jagged portions; and

(k) Adequate and safe bathrooms shall be available.

Stat. Auth.: ORS 430.041, 430.640(1)(h) & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 6-2000, f. & cert. ef. 2-15-00; MHS 17-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-29-08; MHS 5-2008, f. & cert. ef. 6-27-08

309-033-0710

Definitions

(1) "Administrator" means the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at nonhospital facilities. "Administrator" has the same meaning as "director of the facility" as that term is defined in ORS 426.005(1)(a). Whenever "administrator" appears it means the administrator or designee.

(2) "Assistant Administrator" means the Assistant Administrator of the Office of Mental Health Services of the Division.

(3) "Clinical record" means the record required by OAR 309-014-0035, General Standards for Delivery of Community Mental Health Service Elements, documenting the mental health services delivered to clients by a CMHP or subcontractor.

(4) "CMHP" means the community mental health and developmental disabilities program which organizes all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by or contractually affiliated with a local mental health authority operating in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(5) "Community hospital" means any hospital that is not a state hospital.

(6) "Court" means the circuit court acting pursuant to ORS chapter 426.

(7) "Custody" means the prehearing physical retaining of a person taken into custody by:

(a) A peace officer pursuant to ORS 426.070, 426.228, 426.233;

(b) A peace officer at the direction of the director pursuant to ORS 426.233(1);

(c) A health care facility licensed under ORS Chapter 431 and approved by the Division, pursuant to ORS 426.231;

(d) A state hospital pursuant to ORS 426.180;

(e) A hospital pursuant to ORS 426.070 or 426.232; or

(f) A nonhospital facility pursuant to ORS 426.070 or 426.233.

(8) "Designee" means a QMHP designated by the director or a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody pursuant to ORS 426.233.

(9) "Director" means the community mental health and developmental disabilities program director who has been authorized by the local mental health authority to direct the CMHP. "Director" also means a person who has been authorized by the director to act in the director's capacity for the purpose of this rule. In the case of the director ordering a peace officer to take a person into custody pursuant to ORS 426.233, the designee shall be a QMHP who is specifically authorized by the county governing body to order persons to be taken into custody.

(10) "Diversion" means the 14 day period of intensive treatment when a director and a psychiatrist certify a person as a mentally ill person pursuant to the provision of ORS 426.237(1)(b).

(11) "Division" means the Mental Health and Developmental Disability Services Division of the Department of Human Services.

(12) "NMI" is the notification of mental illness required, pursuant to ORS 426.070, to be submitted by any two persons, a county health officer or a magistrate to the director and thereafter submitted by the director to the court or, pursuant to 426.234, to be submitted by the physician or the direc-

tor to the court. Pursuant to 426.070 and 426.234, the court commences proceedings pursuant to 426.070 to 426.130 upon receipt of the NMI.

(13) "Nurse" means a registered nurse or a psychiatric nurse practitioner licensed by the Oregon Board of Nursing, but does not include a licensed practical nurse or a certified nurse assistant.

(14) "Peace officer" means a sheriff, constable, marshal, municipal policeman, member of the Oregon State Police or investigator of the Criminal Justice Division of the Department of Justice and such other persons as may be designated by law.

(15) "Psychiatrist" means a physician licensed as provided pursuant to ORS 677.010 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(16) "QMHP" means a qualified mental health professional that meets the following minimum qualifications:

(a) Psychiatrist licensed to practice in the State of Oregon;

(b) Physician licensed to practice in the State of Oregon;

(c) Graduate degree in psychology;

(d) Graduate degree in social work;

(e) Graduate degree in psychiatric nursing and licensed in the State of Oregon;

(f) Graduate degree in another mental health-related field; or

(g) Any other person whose education and experience meet, in the judgment of the Division, a level of competence consistent with the responsibilities required by the Division.

(17) "Restraint" Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely

(18) "Seclusion" is the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving.

(19) "State hospital" means Oregon State Hospital in Salem, Dammasch State Hospital in Wilsonville and Eastern Oregon Psychiatric Center in Pendleton.

(20) "Superintendent" means the chief executive officer of a state hospital, or designee, or, a person authorized by the superintendent to act in the superintendent's capacity for the purpose of this rule.

Stat. Auth.: ORS 426.005, 426.060, 426.110(2), 426.232, 426.236 & 430.041

Stats. Implemented: ORS 426.005 - 426.309

Hist.: MHD 10-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-220-0010; MHS 5-2008, f. & cert. ef. 6-27-08

309-033-0735

Quarterly Reports

(1) Any hospital or nonhospital facility certified under these rules must report the number of seclusion and the number of restraint incidents to AMH within 30 days of the end of each calendar quarter.

(2) The department shall compile the information from all facilities approved under this rule and make available to the public statewide aggregate data. The information may be divided according to facility types.

Stat. Auth.: ORS 426.236, 426.385 & 430.041

Stats. Implemented: ORS 426.005 - 426.309

Hist.: MHS 17-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-29-08; MHS 5-2008, f. & cert. ef. 6-27-08

Department of Human Services, Administrative Services Division and Director's Office Chapter 407

Rule Caption: Criteria for Awarding Grants under the Access and Effectiveness Health Care Delivery Grant Program.

Adm. Order No.: DHSD 5-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 407-035-0000, 407-035-0005, 407-035-0010, 407-035-0015

Subject: These rules establish criteria for awarding grants under the Access and Effectiveness Health Care Delivery grant program which was established to improve access to and the effectiveness of health care delivery for families in accordance with requirement of House Bill 3636(21).

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-035-0000

Scope

These rules (OAR 407-035-0000 to 407-035-0015) establish criteria for awarding grants under the Access and Effectiveness Health Care Delivery grant program which was established to improve access to and the effectiveness of health care delivery for families.

Stat. Auth.: ORS 409.050 & 2008 HB 3626(21)

ADMINISTRATIVE RULES

Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

407-035-0005

Program Administration

(1) The Department of Human Services (Department) shall award grants for two projects. One of the two grants must be awarded for a project that predominantly serves a rural area as defined by the Oregon Health and Science University, Office of Rural Health.

(2) The Legislature has appropriated a total of \$500,000 to fund two grant projects. Each grant will be awarded for an amount not to exceed \$250,000. The grant amount awarded to each project shall be based on submitted proposals and contract negotiations with the Department.

(3) The Northwest Health Foundation (NWHF), in partnership with the Department, shall administer the program, including soliciting, reviewing, and evaluating proposals. NWHF shall also provide project monitoring, technical assistance, and submit periodic status reports to the Department.

(4) Grant funding will be awarded for a two-year period commencing on the date all parties have signed their respective grant contract.

Stat. Auth.: ORS 409.050 & 2008 HB 3626(21)
Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

407-035-0010

Grant Award Process

(1) A request for grant proposal will be advertised by NWHF by publication on its web site, e-news, and communication to eligible entities.

(2) All proposals must be submitted by the date specified in the solicitation document.

(3) NWHF will document receipt of all proposals.

(4) Entities must submit a proposal to NWHF. NWHF shall review and evaluate the proposals on behalf of the Department following the requirements provided in the request for grant proposal issued by NWHF. To qualify for a grant, proposers must demonstrate in their proposal that they have the ability to leverage non-state resources given the strengths and limitations of their geographic locations.

(5) NWHF will evaluate and rank all proposals based on the following evaluation criteria:

(a) A brief description of project goals and how the proposer intends to address the program goals, information on methods to be used in which improved access and effective health care delivery for families may be addressed, and how the project will meet the program priorities, with emphasis to statewide applicability and replicability; (100 points)

(b) A proposed work plan, including timeline, deliverables, evaluation outcomes, and budget; (75 points)

(c) Proposer's experience with health care delivery programs and services; (50 points)

(d) A list of staff and their qualifications; (50 points)

(e) An impact description of how the project will affect the cost and quality of and access to health care; (50 points)

(f) A description of how the structure and operation of the entity reflects the interests of and is accountable to the diverse needs of the local community; (50 points); and

(g) A description of how the project will be sustained once grant funding has expired. (50 points)

(6) Projects must also meet the following:

(A) Create incentives for collaborative, community-based organizations to bring diverse stakeholders together to coordinate, communicate, and improve access to health care for local residents of the community; and

(b) Improve health care delivery in the community by providing:

(A) Patient-centered care in which there is a sustained relationship between a patient and culturally competent provider team and that utilizes patient-driven goals and evidence-based practices;

(B) Team-based care that takes advantage of nursing services, including care coordination, school-based health services, home visits, telephone triage, and clinical case management, and that maximizes services during each patient visit;

(C) Coordinated care that links patients to comprehensive services in the community, including specialty care, mental health care, dental care, vision care, and social services;

(D) Provider accessibility through the use of telephone and electronic mail, and the removal of transportation, language, cultural, and other barriers to timely care; and

(E) Collaboration with the community that ensures that health-related interests and services are coordinated, psychosocial services are incorporated, resources are leveraged and maximized, and assessments are conducted on health status, disparities, and effectiveness of services.

(7) NWHF will form a committee consisting of at least four qualified individuals to consider the proposals and create a prioritized list of recommended proposers.

(8) NWHF will make recommendations to the Department to issue grants based on the evaluation.

(9) The Department will consider NWHF recommendations and enter into negotiations with the two highest ranked proposers.

Stat. Auth.: ORS 409.050 & 2008 HB 3626(21)
Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

407-035-0015

Program Termination

These rules shall be effective through January 2, 2012.

Stat. Auth.: ORS 409.050, 2008 HB 3626(21)
Stats. Implemented: 2008 HB 3626(21)
Hist.: DHSD 5-2008, f. & cert. ef. 7-1-08

Rule Caption: Support for Improved Provider Enrollment Process through Federal Compliance and Legal Sufficiency.

Adm. Order No.: DHSD 6-2008(Temp)

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08 thru 12-27-08

Notice Publication Date:

Rules Adopted: 407-120-0325

Rules Amended: 407-120-0300, 407-120-0310, 407-120-0320, 407-120-0330, 407-120-0340, 407-120-0350, 407-120-0360, 407-120-0370, 407-120-0380

Subject: In January 2008, the Department laid the foundation for improved provider processes by consolidating various division rules into the Department's chapter 407 rules for provider enrollment and claiming using the Medicaid Management Information System (MMIS). Since then, the Department has been reviewing and updating the processes, forms, and rules associated with the provider enrollment process to improve and enhance compliance with federal requirements. The Department will implement this improved provider enrollment process, forms, and provider enrollment agreement on July 1, 2008. These temporary rules are necessary to provide the legal sufficiency for the process and form changes that are effective July 1, 2008.

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

407-120-0300

Definitions

The following definitions apply to OAR 407-120-0300 to 407-120-0380:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices resulting in an unnecessary cost to the Department, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes actions by clients or recipients that result in unnecessary cost to the Department.

(2) "Advance Directive" means a form that allows an individual to have another individual make health care decisions when he or she cannot make decisions and informs a doctor if the individual does not want any life sustaining help if he or she is near death.

(3) "Benefit Package" means the package of covered health care services for which the client is eligible.

(4) "Billing Agent or Billing Service" means a third party or organization that contracts with a provider to perform designated services in order to facilitate claim submission or electronic transactions on behalf of the provider.

(5) "Billing Provider" means an individual, agent, business, corporation, clinic, group, institution, or other entity who, in connection with submission of claims to the Department, receives or directs payment from the Department on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(6) "Children's Health Insurance Program (CHIP)" means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Division of Medical Assistance Programs (DMAP).

(7) "Claim" means a bill for services, a line item of a service, or all services for one client within a bill. Claim includes a bill or an encounter associated with requesting reimbursement, whether submitted on paper or electronically. Claim also includes any other methodology for requesting reimbursement that may be established in contract or program-specific rules.

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(8) "Client or Recipient" means an individual found eligible by the Department to receive services under the OHP demonstration, medical assistance program or other public assistance programs administered by the Department. The following OHP categories are eligible for enrollment:

(a) Temporary Assistance to Needy Families (TANF) are categorically eligible families with income levels under current TANF eligibility rules;

(b) CHIP children under one year of age who have income under 185% Federal Poverty Level (FPL) and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) adults under 100% of the FPL are clients who are pregnant women with income under 100% of FPL;

(d) PLM adults over 100% of the FPL are clients who are pregnant women with income between 100% and 185% of the FPL;

(e) PLM children under one year of age who have family income under 133% of the FPL or were born to mothers who were eligible as PLM adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through eighteen years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(h) OHP adults and couples are clients age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP families are clients, age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) recipients are clients who are eligible by virtue of their eligibility under the GA program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare eligibles are clients with concurrent Medicare eligibility with income levels under current eligibility rules;

(l) AB/AD without Medicare eligibles are clients without Medicare with income levels under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare eligibles are clients with concurrent Medicare Part A or Medicare Parts A and B eligibility with income levels under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare eligibles are clients without Medicare with income levels under current eligibility rules; or

(p) Children, Adults and Families (CAF) children are clients who are children with medical eligibility determined by CAF or Oregon Youth Authority (OYA) receiving OHP under ORS 414.025, 418.034, and 418.187 through 418.970. These individuals are generally in the care or custody of CAF or OYA who are in placement outside of their homes.

(9) "Client Representative" means an individual who can make decisions for clients who are not able to make such decisions themselves. For purposes of medical assistance a client representative may be, in the following order of priority, an individual who is designated as the client's health care representative under ORS 127.505(12), a court-appointed guardian, a spouse, or other family member as designated by the client, the individual service plan team (for developmentally disabled clients), a Department case manager or other Department designee. To the extent that other Department programs recognize other individuals who may act as a client representative, that individual may be considered the client representative in accordance program-specific rules or applicable contracts.

(10) "Clinical Records" means the medical, dental, or mental health records of a client. These records include the Primary Care Provider (PCP's) records, the inpatient and outpatient hospital records and the Exceptional Needs Care Coordinator (ENCC), complaint and disenrollment for cause records which may be located in the Prepaid Health Plan (PHP's) administrative offices.

(11) "Conviction or Convicted" means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending.

(12) "Covered Services" means medically appropriate health services or items that are funded by the Legislature and described in ORS chapter 414, including the OHP authorized under ORS 414.705 to 414.750 and applicable Department rules describing the benefit packages of covered services; except as excluded or limited under OAR 410-141-0500, excluded services and limitations for OHP clients; or such other public assistance services provided to eligible clients under program-specific requirements or contracts by providers required to enroll with the Department under OAR 407-120-0300 to 407-120-0380.

(13) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules.

(14) "Department" means the Department of Human Services.

(15) "Diagnosis Code" means the code as identified in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM). The primary diagnosis code is shown in all billing claims and PHP encounters, unless specifically excluded in individual provider rules. Where they exist, diagnosis codes must be shown to the degree of specificity outlined in OAR 407-120-0340, claim and PHP encounter submission.

(16) "Electronic Data Transaction (EDT)" means the electronic exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, conducted by either web portal or electronic data interchange in accordance with the Department's electronic data transaction rule (OAR 407-120-0100 to 407-120-0200).

(17) "Exclusion" means the Department will not reimburse a specific provider who has defrauded or abused the Department for items or services that a provider furnished.

(18) "False Claim" means a claim or PHP encounter that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and that information would result, or has resulted, in an overpayment or improper use for per capita cost calculations.

(19) "Fraud" means an intentional deception or misrepresentation made by an individual with the knowledge that the deception could result in some unauthorized benefit to himself or some other individual. It includes any act that constitutes fraud or false claim under applicable federal or state law.

(20) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures and supplies. HCPCS consists of the Level I – American Medical Association's Physicians' Current Procedural Terminology (CPT), Level II – National Codes and Level III – Local Codes.

(21) "Health Insurance Portability and Accountability Act (HIPAA)" means a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(22) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(23) "Individual Adjustment Request" means a form (DMAP 1036) used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(24) "Medicaid" means a federal and state funded portion of the medical assistance program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department.

(25) "Medicaid Management Information System (MMIS)" means the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of the system include verifying provider enrollment and client eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(26) "Medical Assistance Program" means a program for payment of health care provided to eligible Oregonians. Oregon's medical assistance program includes Medicaid services including the OHP Medicaid Demonstration, and CHIP. The medical assistance program is administered and coordinated by DMAP, a division of the Department.

(27) "Medically Appropriate" means services and medical supplies that are required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions, or injuries and which are:

(a) Consistent with the symptoms or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence based medicine and professional standards of care as effective;

(c) Not solely for the convenience of a client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a client in the provider's judgment.

(28) "Medicare" means the federal health insurance program for the aged and disabled administered by the Centers for Medicare and Medicaid Services (CMS) under Title XVIII of the Social Security Act.

(29) "National Provider Identification (NPI)" means a federally directed provider number mandated for use on HIPAA covered transactions by individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 Code of Federal Regulations (CFR) 160.103) and who conduct HIPAA covered transactions electronically.

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(30) “Non-Covered Services” means services or items for which the Department is not responsible for payment. Non-covered services are identified in:

- (a) OAR 410-120-1200, Excluded Services and Limitations;
- (b) OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System;
- (c) OAR 410-141-0480, OHP Benefit Package of Covered Services;
- (d) OAR 410-141-0520, Prioritized List of Health Services; and
- (e) The individual Department provider rules, program-specific rules, and contracts.

(31) “Non-Participating Provider” means a provider who does not have a contractual relationship with the PHP.

(32) “Nursing Facility” means a facility licensed and certified by the Department’s Seniors and People with Disabilities Division (SPD) defined in OAR 411-070-0005.

(33) “Oregon Health Plan (OHP)” means the Medicaid demonstration project that expands Medicaid eligibility to eligible clients. The OHP relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(34) “Out-of-State Providers” means any provider located outside the borders of Oregon:

- (a) Contiguous area providers are those located no more than 75 miles from the border of Oregon;
- (b) Non-contiguous area providers are those located more than 75 miles from the borders of Oregon.

(35) “Post-Payment Review” means review of billings or other medical information for accuracy, medical appropriateness, level of service, or for other reasons subsequent to payment of the claim.

(36) “Prepaid Health Plan (PHP)” means a managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with DMAP or Addictions and Mental Health Division (AMH) on a case managed, prepaid, capitated basis under the OHP. PHP’s may be a Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), Primary Care Organization (PCO) or Chemical Dependency Organization (CDO).

(37) “Prohibited Kickback Relationships” means remuneration or payment practices that may result in federal civil penalties or exclusion for violation of 42 CFR 1001.951.

(38) “PHP Encounter” means encounter data submitted by a PHP or by a provider in connection with services or items reimbursed by a PHP.

(39) “Prior Authorization” means payment authorization for specified covered services or items given by Department staff, or its contracted agencies, or a county if required by the county, prior to provision of the service. A physician or other referral is not a prior authorization.

(40) “Provider” means an individual, facility, institution, corporate entity, or other organization which supplies health care or other covered services or items, also termed a performing provider, that must be enrolled with the Department in accordance with OAR 407-120-0300 to 407-120-0380 in order to seek reimbursement from the Department, including services provided, under program-specific rules or contracts with the Department or with a county or PHP.

(41) “Quality Improvement” means the effort to improve the level of performance of key processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality improvement includes the goals of quality assurance, quality control, quality planning, and quality management in health care where “quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge.”

(42) “Quality Improvement Organization (QIO)” means an entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a “Peer Review Organization.”

(43) “Remittance Advice” means the automated notice a provider receives explaining payments or other claim actions.

(44) “Subrogation” means the right of the state to stand in place of the client in the collection of third party resources, including Medicare.

(45) “Suspension” means a sanction prohibiting a provider’s participation in the Department’s medical assistance or other programs by deactivation of the assigned provider number for a specified period of time or until the occurrence of a specified event.

(46) “Termination” means a sanction prohibiting a provider’s participation in the Department’s programs by canceling the assigned provider number and agreement.

- (a) The exceptions cited in 42 CFR 1001.221 are met; or
- (b) Otherwise stated by the Department at the time of termination.

(47) “Third Party Resource (TPR)” means a medical or financial resource, including Medicare, which, by law, is available and applicable to pay for covered services and items for a medical assistance client.

(48) “Usual Charge” means when program-specific or contract reimbursement is based on usual charge, and is the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The provider’s charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month’s charges;

(b) The provider’s lowest charge per unit of service on the same date that is advertised, quoted, or posted. The lesser of these applies regardless of the payment source or means of payment; or

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the FPL, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to TPR are to be considered.

(49) “Visit Data” means program-specific or contract data collection requirements associated with the delivery of service to clients on the basis of an event such as a visit.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHS 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHS 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0310

Provider Requirements

(1) Scope of Rule. All providers seeking reimbursement from the Department, a PHP, or a county pursuant to a county agreement with the Department for the provision of covered services or items to eligible recipients, must comply with these rules, OAR 407-120-0300 to 407-120-0380, and the applicable rules or contracts of the specific programs described below:

(a) Programs administered by DMAP including the OHP and the medical assistance program that reimburses providers for services or items provided to eligible recipients, including but not limited to chapter 410, division 120; chapter 410, division 141; and provider rules in chapter 410 applicable to the provider’s service category;

(b) Programs administered by AMH that reimburse providers for services or items provided to eligible AMH recipients; or

(c) Programs administered by SPD that reimburse providers for services or items provided to eligible SPD recipients.

(2) Visit Data.

(a) Some programs require providers to document visit data in connection with service delivery.

(A) Department programs use visit data to monitor service delivery, planning, and quality improvement activities.

(B) Visit data is required to be submitted by a program-specific rule or contract. A provider is required to make accurate, complete, and timely submission of visit data as a material term of provider participation in the applicable Department program.

(b) Visit data is not a HIPAA transaction and does not constitute a claim for reimbursement.

(3) CHIP and Medicaid-Funded Covered Services and Items.

(a) Covered services or items paid for with Medicaid (Title XIX) and CHIP (Title XXI) funds (referred to as the medical assistance program) are also subject to federal and state Medicaid rules and requirements. In interpreting these rules and program-specific rules or contracts, the Department will construe them as much as possible in a manner that will comply with federal and state medical assistance program laws and regulations, and the terms and conditions of federal waivers and the state plans

(b) If a provider is reimbursed with medical assistance program funds, the provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 United States Code (USC) 1396 et. seq., and CHIP services under Title XXI, including without limitation:

(A) Maintaining all records necessary to fully disclose the extent of the services provided to individuals receiving medical assistance and furnish such information to any state or federal agency responsible for administration or oversight of the medical assistance program regarding any payments claimed by an individual or institution for providing Medicaid services as the state or federal agency may from time to time request;

(B) Complying with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 subpart (B);

(C) Maintaining written notices and procedures respecting advance directives in compliance with 42 USC 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(D) Certifying that the information is true, accurate and complete when submitting claims or PHP encounters for the provision of medical assistance services or items. Submission of a claim or PHP encounter constitutes a representation of the provider’s understanding that payment of the claim will be from federal or state funds, or both, and that any falsification

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or concealment of a material fact may result in prosecution under federal or state laws.

(c) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices, and HMOs must comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above-listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services should comply with Medicare and Medicaid regulations in their state. Submittal to the Department of the appropriate claim form requesting payment for medical services provided to a Medicaid eligible shall be considered representation to the Department of the medical provider's compliance with the above-listed laws.

(d) Payment for any service or item furnished by a provider of CHIP or Medicaid-funded services or items may not be made by or through (directly or by power of attorney) any individual or organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold or transferred to the individual or organization for an added fee or a deduction of a portion of the accounts receivable.

(e) The Department will make medical assistance provider payments only to the following:

(A) The provider who actually performed the service or provided the item;

(B) In accordance with a reassignment from the provider to a government agency or reassignment by a court order;

(C) To the employer of the provider, if the provider is required as a condition of employment to turn over his or her fees to the employer, and the employer is enrolled with the Department as a billing provider;

(D) To the facility in which the service is provided, if the provider has a contract under which the facility submits the claim, and the facility is enrolled with the Department as a billing provider;

(E) To a foundation, PHP, clinic, or similar organization operating as an organized health care delivery system, if the provider has a contract under which the organization submits the claim, and the organization is enrolled with the Department as a billing provider; or

(F) To an enrolled billing provider, such as a billing service or an accounting firm that, in connection with the submission of claims, receives or directs payments in the name of the provider, if the billing provider's compensation for this service is:

(i) Related to the cost of processing the billing;

(ii) Not related on percentage or other basis to the amount that is billed or collected; and not dependent upon the collection of the payment.

(f) Providers must comply with TPR requirements in program-specific rules or contracts.

(4) Required State and Federal Statutes. When a provider submits a claim for services or supplies provided to a client or a PHP encounter, it is a representation by the provider that the provider has complied with all the requirements of these rules, and if applicable, program-specific rules or contracts.

(5) Program Integrity. The Department uses several approaches to promote program integrity. These rules describe program integrity actions related to provider payments, including provider reimbursement under program-specific rules, county agreements, and contracts. The program integrity goal is to pay the correct amount to a properly enrolled provider for covered services provided to an eligible client according to the program-specific coverage criteria in effect on the date of service.

(a) Program integrity activities include but are not limited to the following:

(A) Medical or professional review including but not limited to following the evaluation of care in accordance with evidence-based principles, medical error identification, and prior authorization processes, including all actions taken to determine the coverage and appropriateness of services or items in accordance with program-specific rules or contract;

(B) Provider obligations to submit correct claims and PHP encounters;

(C) Onsite visits to verify compliance with standards;

(D) Implementation of HIPAA electronic transaction standards to improve accuracy and timeliness of claims processing and encounter reporting;

(E) Provider credentialing activities;

(F) Accessing federal Department of Health and Human Services (DHHS) database (exclusions);

(G) Quality improvement activities;

(H) Cost report settlement processes;

(I) Audits;

(J) Investigation of false claims, fraud or prohibited kickback relationships; and

(K) Coordination with the Department of Justice Medicaid Fraud Control Unit (MFCU) and other health oversight authorities.

(b) The following people may review a request for services or items, or audit a claim or PHP encounter for care, services, or items, before or after payment, for assurance that the specific care, item, or service was provided in accordance with the program-specific and the generally accepted standards of a provider's field of practice or specialty:

(A) Department staff or designee;

(B) Medical utilization and professional review contractor;

(C) Dental utilization and professional review contractor; or

(D) Federal or state oversight authority.

(c) Payment may be denied or subject to recovery if the review or audit determines the care, service, or item was not provided in accordance with provider rules or does not meet the criteria for quality or medical appropriateness of the care, service, or item or payment. Related provider and hospital billings will also be denied or subject to recovery.

(d) If the Department determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery.

(e) The Department may communicate with and coordinate any program integrity actions with the MFCU, DHHS, and other federal and state oversight authorities.

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

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.1455

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0320

Provider Enrollment

(1) In some Department program areas, being an enrolled Department provider is a condition of eligibility for a Department contract for certain services or activities. The Department requires billing providers to be enrolled as providers consistent with the provider enrollment processes set forth in this rule. If reimbursement for covered services will be made under a contract with the Department, the provider must also meet the Department's contract requirements. Contract requirements are separate from the requirements of these provider enrollment rules. Enrollment as a provider with the Department is not a promise that the enrolled provider will receive any amount of work from the Department, a PHP, or a county.

(2) Relation to Program-Specific or Contract Requirements. Provider enrollment establishes essential Department provider participation requirements for becoming an enrolled Department provider. The details of provider qualification requirements, client eligibility, covered services, how to obtain prior authorization or review (if required), documentation requirements, claims submission, and available electronic access instructions, and other pertinent instructions and requirements are contained in the program-specific rules or contract.

(3) Criteria for Enrollment. Prior to enrollment, providers must:

(a) Meet all program-specific or contract requirements identified in program-specific rules or contracts in addition to those requirements identified in these rules;

(b) Meet Department contracting requirements, as specified by the Department's Office of Contracts and Procurement (OC&P);

(c) Meet Department and federal licensing requirements for the type of service for which the provider is enrolling;

(d) Meet Department and federal certification requirements for the type of service for which the provider is enrolling; and

(e) Obtain a provider number from the Department for the specific service for which the provider is enrolling.

(4) Participation as an Enrolled Provider. Participation with the Department as an enrolled provider is open to qualified providers that:

(a) Meet the qualification requirements established in these rules and program-specific rules or contracts;

(b) Enroll as a Department provider in accordance with these rules;

(c) Provide a covered service or item within their scope of practice and licensure to an eligible Department recipient in accordance with program-specific rules or contracts; and

(d) Accept the reimbursement amounts established in accordance with the Department's program-specific fee structures or contracts for the service or item.

(5) Enrollment Process. To be enrolled as a Department provider, an individual or organization must submit a complete and accurate provider enrollment form, available from the Department, including all required documentation, and a signed provider enrollment agreement.

(a) Provider Enrollment Form. The provider enrollment form requests basic demographic information about the provider that will be permanently associated with the provider or organization until changed on an update form.

(b) Provider and Program Addendum. Each Department program establishes provider-specific qualifications and program criteria that must be provided as part of the provider enrollment form.

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(A) The provider must meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules, and must comply with all Oregon statutes and regulations applicable to the provider's scope of service as well as the program-specific rules or contract applicable to the provision of covered services. The provider and program addendum will specify the required documentation of professional qualifications that must be provided with the provider enrollment form.

(B) All providers of services within Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county, or city government to operate a business or to provide services. In addition providers must be registered to do business in Oregon by registering with the Oregon Secretary of State, Corporation Division, if registration is required.

(c) Provider Disclosure Form. All individuals and entities are required to disclose information used by the Department to determine whether an exclusion applies that would prevent the Department from enrolling the provider. Individual performing providers must submit a disclosure statement. All providers that are enrolling as an entity (corporation, non-profit, partnership, sole proprietorship, governmental) must submit a disclosure of ownership and control interest statement. Payment cannot be made to any individual or entity that has been excluded from participation in federal or state programs or that employs or is managed by excluded individuals or entities.

(A) Entities must disclose all the information required on the disclosure of ownership and control interest statement. Information that must be disclosed includes the name, address, and taxpayer identification number of each individual with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership of five percent or more; whether any of the named individuals are related as spouse, parent, child, sibling, or other family member by marriage or otherwise; and the name and taxpayer identification number of any other disclosing entity in which an individual with an ownership or control interest in the disclosing entity also has an ownership or control interest.

(B) A provider must submit, within 35 days of the date of a request by DHHS or the Department, full and complete information about the ownership of any subcontractor with whom the provider had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the five-year period ending on the date of the request.

(C) Before the Department enters into a provider enrollment agreement with a provider, or renews a provider agreement, or at any time upon written request of the Department, the provider must disclose to the Department the identity and taxpayer identification number of any individual who has an ownership or control interest in the provider; or is an agent or managing employee of the provider; or the individual performing provider that has been convicted of a criminal offense related to that individual's involvement in any program under Medicare, Medicaid, or Title XX services program, since the inception of those programs.

(D) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement if the individual performing provider or any individual who has an ownership or control interest in the entity, or who is an agent or managing employee of the provider, has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under Medicare, Medicaid, Children's Health Insurance, Title XX services, or other public assistance program.

(E) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement, or contract for provider services, if it determines that the provider did not fully and accurately make any disclosure required under section (5)(c) of this rule.

(F) Taxpayer identification numbers, including social security numbers (SSN) and employer identification numbers (EIN), must be provided where indicated on the Disclosure Statement or the Disclosure of Ownership and Control Interest Statement. The taxpayer identification number will be used to confirm whether the individual or entity is subject to exclusion from participation in the Oregon Medicaid program.

(6) Provider Enrollment Agreement. The provider must sign the provider enrollment agreement, and submit it for review to the Department at the time the provider submits the provider enrollment form and related documentation. Signing the provider enrollment agreement constitutes agreement by a provider to comply with all applicable Department provider and program rules, and applicable federal and state laws and regulations in effect on the date of service.

(7) Request to Conduct Electronic Transactions. A provider may request to conduct electronic transactions with the Department by enrolling and completing the appropriate authorization forms in accordance with the electronic data transaction rules (OAR 407-120-0100 to 407-120-0200).

(8) Enrollment of Providers. A provider will be enrolled, assigned, and issued a provider number for use in specific payment or business operations upon the following criteria:

(a) Provider submission of a complete and signed (when applicable), provider enrollment form, provider enrollment agreement, provider certification and all required documents to the Department program responsible for enrolling the provider. Provider signature must be the provider or an individual with actual authority from the provider to legally bind the provider to attest and certify to the accuracy and completeness of the information submitted;

(b) The Department's verification of licensing or certification or other authority to perform the service or provide the item within the lawful scope of practice recognized under Oregon law. The Department may confirm any information on the provider enrollment form or documentation submitted with the provider enrollment form, and may request additional information; and

(c) The Department's acceptance of the provider enrollment form, provider enrollment agreement, and provider certification by the Department unit responsible for approving the enrollment of the provider.

(9) Claim or Encounter Submission. Submission of a claim or encounter or other reimbursement document constitutes the enrolled provider's agreement that:

(a) The service or item was provided in compliance with all applicable rules and requirements in effect on the date of service;

(b) The provider has created and maintained all records necessary to disclose the extent of services or items provided and provider's compliance with applicable program and financial requirements, and that the provider agrees to make such information available upon request to the Department, the MFCU (for Medicaid-funded services or items), the Oregon Secretary of State, and (for federally-funded services or items) the federal funding authority and the Comptroller General of the United States, or their designees;

(c) The information on the claim or encounter, regardless of the format or other reimbursement document is true, accurate and complete; and

(d) The provider understands that payment of the claim or encounter or other reimbursement document will be from federal or state funds, or a combination of federal and state funds, and that any falsification, or concealment of a material fact, may result in prosecution under federal and state laws.

(10) Providers Required to Use an NPI. The Department has taken action to ensure compliance with the NPI requirements pursuant to 45 CFR Part 162 when those requirements became effective on May 23, 2007. In the event of a transition period approved by CMS beyond May 23, 2008, the following requirements for contractors, providers, and provider-applicants will apply:

(a) Providers and contractors that obtain an NPI are required to use their NPI where indicated. In situations where a taxonomy code may be used in conjunction with the NPI, providers must update their records as specified with the Department's provider enrollment unit. Providers applying for enrollment with the Department that have been issued an NPI must include that NPI and any associated taxonomy codes with the provider enrollment form;

(b) A provider enrolled with the Department must bill using the NPI pursuant to 45 CFR part 162.410, in addition to the Department-assigned provider number, where applicable, and continue to bill using the Department assigned provider number until the Department informs the provider that the Department assigned provider number is no longer allowed, or the NPI transition period has ended, whichever occurs first. Failure to use the NPI and Department-assigned provider number as indicated during this transition period may result in delay or rejection of claims and other transactions;

(c) The NPI and applicable taxonomy code combinations will be cross-referenced to the Department assigned provider number for purposes of processing all applicable electronic transactions as specified in OAR 407-120-0100;

(d) The provider and PHP must cooperate with the Department with reasonable consultation and testing procedures, if any, related to implementation of the use of NPI's; and

(e) Certain provider types are not eligible for an NPI based on federal criteria for obtaining an NPI. Providers not eligible for an NPI must always use their Department provider number on claims, encounters, or other reimbursement documents for that specific provider type.

(11) The effective date of provider enrollment is the date the provider's request is received by the Department if on that date the provider has met all applicable requirements. The effective date may be retroactive for up to one year to encompass dates on which the provider furnished covered services to a medical assistance recipient for which it has not been paid, if on the retroactive effective date the provider has met all applicable requirements.

(12) Provider numbers are specific to the category of service or items authorized by the Department. Issuance of a Department-assigned provider

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number establishes enrollment of an individual or organization as a provider for the specific category of services covered by the provider and program addendum submitted with the provider enrollment form and enrollment agreement.

(13) Providers must provide the following updates:

(a) An enrolled provider must notify the Department in writing of a material change in any status or condition on any element of their provider enrollment form. Providers must notify the Department of changes in any of this information in writing within 30 calendar days of any of the following changes:

- (A) Business affiliation;
- (B) Ownership;
- (C) NPI;
- (D) Associated taxonomy codes;
- (E) Federal Tax Identification number;
- (F) Ownership and control information; or
- (G) Criminal convictions.

(b) These changes may require the submission of a provider enrollment form, provider enrollment agreement, provider certification, or other related documentation.

(c) Claims submitted by, or payments made to, providers who have not timely furnished the notification of changes or have not submitted any of the items that are required due to a change may be denied or recovered.

(d) Notice of bankruptcy proceedings must be immediately provided to the Department in writing.

(14) Tax Reporting and Withholding.

(a) Providers must submit the provider's SSN for individuals or a federal EIN for entities, whichever is required for tax reporting purposes on IRS Form 1099. Billing providers must submit the SSN or EIN of all performing providers in connection with claims or payments made to or on behalf of the performing provider, in addition to the billing provider's SSN or EIN. Providing this number is mandatory to be eligible to enroll as a provider. The provider's SSN or EIN is required pursuant to 42 CFR 433.37 federal tax laws at 26 USC 6041. SSN's and EIN's provided pursuant to this authority are used for the administration of state, federal, and local tax laws and the administration of this program for internal verification and administrative purposes including but not limited to identifying the provider for payment and collection activities.

(b) The Department must comply with the tax information reporting requirements of section 6041 of the Internal Revenue Code (26 USC 6041). Section 6041 requires the filing of annual information returns showing amounts paid to providers, who are identified by name, address, and SSN or EIN. The Department files its information returns with the Internal Revenue Service (IRS) using Form 1099MISC.

(c) The IRS Code section 3406(a)(1)(B) requires the Department to begin backup withholding when notified by the IRS that a taxpayer identification number reported on an information return is incorrect. If a provider receives notice of backup withholding from the Department, the provider is responsible for timely complying with the notice and providing the Department with accurate information. The Department will comply with IRS requirements for backup withholding.

(d) Failure to notify the Department of a change in federal tax identification number (SSN or EIN) may result in the Department imposing a sanction as specified in OAR 407-120-0360.

(e) If the Department notifies a provider about an error in federal tax identification number, the provider must supply a valid federal tax identification number within 30 calendar days of the date of the Department's notice. Failure to comply with this requirement may result in the Department imposing a sanction as specified in OAR 407-120-0360, for each time the provider submits an inaccurate federal tax identification number, and may require back-up withholding. Federal tax identification number requirements described in this rule refer to any requirements established by the IRS.

(15) Providers of services to clients outside the State of Oregon will be enrolled as a provider under section (8) of this rule if they comply with the requirements of section (8) and meet the following conditions:

(a) The provider is appropriately licensed or certified and is enrolled in the provider's home state for participation in that state's Medicaid program or, for non-Medicaid services, enrolled or contracted with the state agency in the provider's state to provide the same program-specific service in the provider's state. Disenrollment or sanction from the other state's Medicaid program, or exclusion from any other federal or state health care program or comparable program-specific service delivery system is a basis for denial of enrollment, termination, or suspension from participation as a Department provider;

(b) The Oregon Board of Pharmacy issued a license to provide pharmacy services to a noncontiguous out-of-state pharmacy provider;

(c) The services must be authorized in the manner required for out-of-state services under the program-specific rules or contract for an eligible client;

(d) The services for which the provider bills are covered services under the OHP or other Department program for which covered services are authorized to be provided to the client;

(e) A facility, including but not limited to a hospital, rehabilitative facility, institution for care of individuals with mental retardation, psychiatric hospital, or residential care facility, is enrolled or contracted by the state agency in the state in which the facility is located or is licensed as a facility provider of services by Oregon; or

(f) If the provider is not domiciled in or registered to do business in Oregon, the provider must promptly provide to the Oregon Department of Revenue and the Oregon Secretary of State, Corporation Division all information required by those agencies relative to the provider enrollment form and provider enrollment agreement. The Department will withhold enrollment and payments until the out-of-state provider has provided documentation of compliance with this requirement to the Department unit responsible for enrollment.

(16) The provider enrollment agreement may be terminated as follows:

(a) Provider Termination Request. The provider may ask the Department to terminate the provider enrollment agreement at any time, subject to any specific provider termination requirements in program-specific rules or contracts.

(A) The request must be in writing, signed by the provider, and mailed or delivered to the Department provider enrollment unit. The notice must specify the Department-assigned provider number, if known.

(B) When accepted, the Department will assign the provider number a termination status and the effective date of the termination status.

(C) Termination of the provider enrollment agreement does not relieve the provider of any obligations for covered services or items provided under these rules, program-specific rules or contracts in effect for dates of services during which the provider enrollment agreement was in effect.

(b) Department Termination. The Department may terminate the provider enrollment agreement immediately upon notice to the provider, or a later date as the Department may establish in the notice, upon the occurrence of any of the following events:

(A) The Department fails to receive funding, appropriations, limitations, or other expenditure authority at levels that the Department or the specific program determines to be sufficient to pay for the services or items covered under the agreement;

(B) Federal or state laws, regulations, or guidelines are modified or interpreted by the Department in a manner that either providing the services or items under the agreement is prohibited or the Department is prohibited from paying for such services or items from the planned funding source;

(C) The Department has issued a final order revoking the Department-assigned provider number based on a sanction under termination terms and conditions established in program-specific rules or contract;

(D) The provider no longer holds a required license, certificate or other authority to qualify as a provider. The termination will be effective on the date the license, certificate, or other authority is no longer valid; or

(E) The provider fails to submit any claims for reimbursement for an 18-month period. The provider may reapply for enrollment.

(c) In the event of any dispute arising out of the termination of the provider enrollment agreement, the provider's sole monetary remedy is limited to covered services or items the Department determines to be compensable under the provider agreement, a claim for unpaid invoices, hours worked within any limits set forth in the agreement but not yet billed, and Department-authorized expenses incurred prior to termination. Providers are not entitled to recover indirect or consequential damages. Providers are not entitled to attorney fees, costs, or expenses of any kind.

(17) Immediate Suspension. When a provider fails to meet one or more of the requirements governing participation as a Department enrolled provider, the provider's Department-assigned provider number may be immediately suspended, in accordance with OAR 407-120-0360. The provider shall not provide services or items to clients during a period of suspension. The Department shall deny claims for payment or other reimbursement requests for dates of service during a period of suspension.

(18) The provision of program-specific or contract covered services or items to eligible clients is voluntary on the part of the provider. Providers are not required to serve all clients seeking service. If a provider undertakes to provide a covered service or item to an eligible client, the provider must comply with these rules, program-specific rules or contract.

(a) The provider performs all services, or provides all items, as an independent contractor. The provider is not an officer, employee, or agent of the Department.

(b) The provider is responsible for its employees, and for providing employment-related benefits and deductions that are required by law. The provider is solely responsible for its acts or omissions, including the acts or omissions of its own officers, employees or agents. The Department's

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responsibility is limited to its authorization and payment obligations for covered services or items provided in accordance with these rules.

(19) For Medicaid services, a provider may not deny services to any eligible client because of the client's inability to pay the cost sharing amount imposed by the applicable program-specific or provider-specific rules or contract. A client's inability to pay does not eliminate the client's liability for the cost sharing charge.

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

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0325

Compliance with Federal and State Statutes

(1) When a provider submits a claim for services or supplies provided to a Department client, the Department will consider the submission as the provider's representation to the Department of the provider's compliance with the applicable sections of the federal and state statutes and rules referenced in this rule, and other program rules or contract requirements of the specific program under which the claim is submitted:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) 42 CFR Part 493 Laboratory Requirements and ORS chapter 438 (Clinical Laboratories).

(c) The provider must comply and, as indicated, require all subcontractors to comply with the following federal and state requirements to the extent that they are applicable to the items and services governed by these rules, unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions. For purposes of these rules, all references to federal and state laws are references to federal and state laws as they may be amended from time to time that are in effect on the date of provider's service:

(A) The provider must comply and require all subcontractors to comply with all federal laws, regulations, executive orders applicable to the items and services provided under these rules. Without limiting the generality of the foregoing, the provider expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the items and services provided under these rules:

(i) Title VI and VII of the Civil Rights Act of 1964, as amended;

(ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

(iii) The Americans with Disabilities Act of 1990, as amended;

(iv) Executive Order 11246, as amended;

(v) The Health Insurance Portability and Accountability Act of 1996;

(vi) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

(vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (viii) all regulations and administrative rules established pursuant to the foregoing laws;

(viii) All other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations;

(ix) All federal law governing operation of community mental health programs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the items and services governed by these rules and required by law to be so incorporated. No federal funds may be used to provide services in violation of 42 USC 14402.

(B) Any provider that receives or makes annual payments under Medicaid of at least \$5,000,000, as a condition of receiving such payments, shall:

(i) Establish written policies for all employees of the entity (including management), and of any contractor, subcontractor, or agent of the entity, that provide detailed information about the False Claims Act established under 31 USC 3729 through 3733, administrative remedies for false claims and statements established under 31 USC 38, any Oregon state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblowing protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f)); Providers must:

(ii) Include as part of written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(iii) Include in any employee handbook for the entity, a specific discussion of the laws described in sub-paragraph (i), the rights of the employees to be protected as whistleblowers.

(C) If the items and services governed under these rules exceed \$10,000, the provider must comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment

Opportunity," as amended by Executive Order 11375, and as supplemented in DHS of Labor regulations (41 CFR part 60);

(D) If the items and services governed under these rules exceed \$100,000, and are paid in any part with federal funds, the provider must comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act—33 U.S.C. 1251 to 1387), specifically including, but not limited to, Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations must be reported to the Department, DHHS, and the appropriate Regional Office of the Environmental Protection Agency. The provider must include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section;

(E) The provider must comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163);

(F) The provider must provide written certification indicating that to the best of the provider's knowledge and belief, that:

(i) No federal appropriated funds have been paid or will be paid, by or on behalf of the provider, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Provider must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(iii) The provider must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors must certify and disclose accordingly;

(iv) This certification is a material representation of fact upon which reliance was placed when this provider agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this provider agreement imposed by 31 USC 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(G) If the items and services funded in whole or in part with financial assistance provided under these rules are covered by the HIPAA or the federal regulations implementing the Act, the provider agrees to deliver the goods and services in compliance with HIPAA. Without limiting the generality of the foregoing, items and services funded in whole or in part with financial assistance provided under these rules are covered by HIPAA. The provider must comply and require all subcontractors to comply with the following:

(i) Individually identifiable health information about specific individuals is confidential. Individually identifiable health information relating to specific individuals may be exchanged between the provider and the Department for purposes directly related to the provision to clients of services that are funded in whole or in part under these rules. However, the provider must not use or disclose any individually identifiable health information about specific individuals in a manner that would violate Department privacy rules, (OAR 410-014-0000 et. seq.), or the Department's Notice of Privacy Practices, if done by the Department;

(ii) If the provider intends to engage in EDI transactions with the Department in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, the provider must execute an EDI trading partner agreement with the Department and must comply with the Department's electronic data transmission rules (OAR 407-120-0100 to 407-120-0200);

(iii) If a provider reasonably believes that the provider's or the Department's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, the provider must promptly consult the Department's Privacy Officer. The provider or the Department may initiate a request to test HIPAA transactions, subject to available resources and the Department testing schedule.

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(H) The provider must comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247;

(I) The provider must comply and require all subcontractors to comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations;"

(J) The provider must not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and providers and subcontractors declared ineligible under statutory authority other than Executive Order No. 12,549. Subcontractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding their exclusion status and that of their principals prior to award;

(K) The provider must comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace:

(i) The provider certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in the provider's workplace or while providing services to Department clients. The provider's notice must specify the actions that will be taken by the provider against its employees for violation of such prohibitions;

(ii) Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace, the provider's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;

(iii) Provide each employee to be engaged in the performance of services under these rules a copy of the statement mentioned in paragraph (J)(i) above;

(iv) Notify each employee in the statement required by paragraph (J)(i) that, as a condition of employment to provide services under these rules, the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(v) Notify the Department within ten days after receiving notice under subparagraph (J)(iv) from an employee or otherwise receiving actual notice of such conviction;

(vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

(vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (J)(i) through (J)(vi);

(viii) Require any subcontractor to comply with subparagraphs (J)(i) through (J)(vii);

(ix) Neither the provider, nor any of the provider's employees, officers, agents or subcontractors shall provide any service required under these rules while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the provider or provider's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the provider or provider's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to Department clients or others. Examples of abnormal behavior include, but are not limited to hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech, difficulty walking or performing job activities;

(x) Violation of any provision of this subsection may result in termination of the provider agreement.

(L) The provider must comply and require all sub-contractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.);

(M) A provider reimbursed or seeking reimbursement with Medicaid funds must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

(i) Maintain records as necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and must furnish the information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by the provider or institution for providing Medicaid services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2);

(ii) Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B);

(iii) Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(iv) Certify when submitting any claim for the provision of Medicaid services that the information submitted is true, accurate and complete. The provider must acknowledge provider's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

(N) Providers must comply with the obligations intended for contractors under ORS 279B.220, 279B.225, 279B.230 and 279B.235 (if applicable). Providers shall, to the maximum extent economically feasible in the performance of covered services, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

(O) Providers must comply with all federal, state and local tax laws, including Social Security payment requirements, applicable to payments made by the Department to the provider.

(2) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices and health maintenance organizations shall comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations will provide capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services should comply with Medicare and Medicaid regulations in their state. Submittal to the Department of the appropriate billing form requesting payment for medical services provided to a Medicaid eligible client shall be deemed representation to the Department of the medical provider's compliance with the above-listed laws.

(3) Providers described in ORS chapter 419B are required to report suspected child abuse to their local Children, Adults and Families Division office or police, in the manner described in ORS 419.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered, under CLIA to be a laboratory.

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

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 6-2008(Temp), f. & et. ef. 7-1-08 thru 12-27-08

407-120-0330

Billing Procedures

(1) These rules only apply to covered services and items provided to clients that are paid for by the Department based on a Department fee schedule or other reimbursement method (often referred to as fee-for-service), or for services that are paid for by the Department at the request of a county for county-authorized services, in accordance with program-specific rules or contract.

(a) If a client's service or item is paid for by a PHP, the provider must comply with the billing and procedures related to claim submission established under contract with that PHP, or the rules applicable to non-participating providers if the provider is not under contract with that PHP.

(b) If the client is enrolled in a PHP, but the client is permitted by a contract or program-specific rules to obtain covered services reimbursed by the Department (such as family planning services that may be obtained from any provider), the provider must comply with the billing and claim procedures established under these rules.

(2) All Department-assigned provider numbers are issued at enrollment and are directly associated with the provider as defined in OAR 407-120-0320(12) and have the following uses:

(a) Log-on identification for the Department web portal;

(b) Claim submission in the approved paper formats; and

(c) For electronic claims submission including the web portal for atypical providers pursuant to 45 CFR 160 and 162 where an NPI is not mandated. Use of the Department-assigned provider number will be con-

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sidered authorized by the provider and the Department will hold the provider accountable for its use.

(3) Except as provided in section (4) below, an enrolled provider may not seek payment for any covered services from:

(a) A client for covered benefits; or

(b) A financially responsible relative or representative of that client.

(4) Providers may seek payment from an eligible client or client representative as follows:

(a) The provider may seek payment from any applicable coinsurance, co-payments, deductibles, or other client financial obligation to the extent and as expressly authorized by program-specific rules or contract;

(b) From a client who failed to inform the provider of Department program eligibility, of OHP or PHP enrollment, or of other third party insurance coverage at the time the service was provided or subsequent to the provision of the service or item. In this case, the provider could not bill the Department, the PHP, or third party payer for any reason, including but not limited to timeliness of claims and lack of prior authorization. The provider must document attempts to obtain information on eligibility or enrollment;

(c) The client became eligible for Department benefits retroactively but did not meet other established criteria described in the applicable program-specific rules or contracts.

(d) The provider can document that a TPR made payments directly to the client for services provided that are subject to recovery by the provider in accordance with program-specific rules or contract;

(e) The service or item is not covered under the client's benefit package. The provider must document that prior to the delivery of services or items, the provider informed the client the service or item would not be covered by the Department;

(f) The client requested continuation of benefits during the administrative hearing process and the final decision was not in favor of the client. The client will be responsible for any charges since the effective date of the initial notice of denial; or

(g) In exceptional circumstances, a client may request continuation of a covered service while asserting the right to privately pay for that service. Under this circumstance, a provider may bill the client for a covered service only if the client is informed in advance of receiving the specific service of all of the following:

(A) The requested service is a covered service and the provider would be paid in full for the covered service if the claim is submitted to the Department or the client's PHP, if the client is a member of a PHP;

(B) The estimated cost of the covered service, including all related charges, that the Department or PHP would pay, and for which the client is billed cannot be an amount greater than the maximum Department reimbursable rate or PHP rate, if the client is a member of a PHP;

(C) The provider cannot require the client to enter into a voluntary payment agreement for any amount for the covered service; and

(D) The provider must be able to document, in writing, signed by the client or the client's representative, that the client was provided the information described above; client was provided an opportunity to ask questions, obtain additional information, and consult with the client's case-worker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The provider must provide a copy of the signed agreement to the client. A provider must not submit a claim for payment for the service or item to the Department or to the client's PHP that is subject to such an agreement.

(5) Reimbursement for Non-Covered Services.

(a) A provider may bill a client for services that are not covered by the Department or a PHP, except as provided in these rules. The client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must provide written documentation, signed by the client, or the client's representative, dated prior to the delivery of services or item indicating that the client was provided this information and that the client knowingly and voluntarily agreed to be responsible for payment.

(b) Providers must not bill or accept payment from the Department or a managed care plan for a covered service when a non-covered service has been provided and additional payment is sought or accepted from the client. Examples include but are not limited to charging the client an additional payment to obtain a gold crown (not covered) instead of the stainless steel crown (covered) or charging an additional client payment to obtain eyeglass frames not on the covered list of frames. This practice is called buying-up, which is not permitted, and a provider may be sanctioned for this practice regardless of whether a client waiver is documented.

(c) Providers must not bill clients or the Department for a client's missed appointment.

(d) Providers must not bill clients or the Department for services or items provided free of charge. This limitation does not apply to established

sliding fee schedules where the client is subject to the same standards as other members of the public or clients of the provider.

(e) Providers must not bill clients for services or items that have been denied due to provider error such as required documentation not submitted or prior authorization not obtained.

(6) Providers must verify that the individual receiving covered services is, in fact, an eligible client on the date of service for the service provided and that the services is covered in the client's benefit package.

(a) Providers are responsible for costs incurred for failing to confirm eligibility or that services are covered.

(b) Providers must confirm the Department's client eligibility and benefit package coverage using the web portal, or the Department telephone eligibility system, and by other methods specified in program-specific or contract instructions.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0340

Claim and PHP Encounter Submission

(1) Claim and PHP Encounter Submission. All claims must be submitted using one of the following methods:

(a) Paper forms, using the appropriate form as described in the program-specific rules or contract;

(b) Electronically using the web portal accessed by provider-specific PIN and password. Initial activation by provider of Department-assigned provider number and PIN for web portal access invokes provider's agreement to meet all of the standards for HIPAA privacy, security, and transactions and codes sets standards as defined in 45 CFR 162;

(c) Electronically in a manner authorized by the Department's EDT rules (OAR 407-120-0100 to 407-120-0200); or

(d) Electronically, for PHP encounters, in the manner required by the PHP contract with the Department and authorized by the Department's EDT rules.

(2) Claims must not be submitted prior to delivery of service unless otherwise authorized by program-specific rules or contracts. A claim for an item must not be submitted prior to dispensing, shipping, or mailing the item unless otherwise specified in the Department's program-specific rules or contracts.

(3) Claims and PHP encounters must be submitted in compliance HIPAA transaction and code set rules. The HIPAA transaction and code set rules, 45 CFR 162, apply to all electronic transactions for which DHHS has adopted a standard.

(a) The Department may deny or reject electronic transactions that fail to comply with the federal standard.

(b) The Department is required to comply with the HIPAA code set requirements in 45 CFR 162.1000 through 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically, and with regard to the electronic claims and encounter remittance advice information, including the web portal. Compliance with the code set requirements includes the codes and the descriptors of the codes established by the official entity that maintains the code set. These federal code set requirements are mandatory and the Department has no authority to delay or alter their application or effective dates as established by DHHS.

(A) The issuance of a federal code does not mean that the Department covers the item or service described by the federal code. In the event of an alleged variation between a Department-listed code and a national code, the provider should seek clarification from the Department program. The Department will apply the national code in effect on the date of request or date of service and the Department-listed code may be used for the limited purpose of describing the Department's intent in identifying whether the applicable national code represents a Department covered service or item.

(B) For purposes of maintaining HIPAA code set compliance, the Department adopts, by reference, the required use of the version of all national code set revisions, deletions, and additions in accordance with the HIPAA transaction and code set rules in effect on the date of this rule. This code set adoption may not be construed as Department coverage or that the existence of a particular national code constitutes a determination by the Department that the particular code is a covered service or item. If the provider is unable to identify an appropriate procedure code to use on the claim or PHP encounter, the provider should contact the Department for assistance in identifying an appropriate procedure code:

(i) Current Procedural Terminology, Fourth Edition (CPT-4), (American Medical Association);

(ii) Current Dental Terminology (CDT), (American Dental Association);

(iii) Diagnosis Related Group (DRG), (DHHS);

(iv) Health Care Financing Administration Common Procedural Coding System (HCPCS), (DHHS);

(v) National Drug Codes (NDC), (DHHS); and

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(vi) HIPAA related codes, DHHS, claims adjustment reason, claim status, taxonomy codes, and decision reason as available at the Washington Publishing Company web site: <http://www.wpc.edi.com/content/view/180/223>.

(C) For electronic claims and PHP encounters, the appropriate HIPAA claim adjustment reason code for third party payer, including Medicare, explanation of payment must be used.

(c) Diagnosis Code Requirement.

(A) For claims and PHP encounters that require the listing of a diagnosis code as the basis for the service provided, the code listed on the claim must be the code that most accurately describes the client's condition and the service or item provided.

(B) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis code set including the code and the descriptor of the code by the official entity that maintains the code set, unless the requirement for a primary diagnosis code is specifically excluded in the Department's program-specific rules or contract. All diagnosis codes are required to the highest degree of specificity. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate program-specific rules or contract.

(C) Hospitals must follow national coding guidelines and must bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(d) Providers are required to provide and identify the following procedures codes.

(A) The appropriate procedure code on claims and PHP encounters as instructed in the appropriate Department program-specific rules or contract and must use the appropriate HIPAA procedure code set, set forth in 45 CFR 162.1000 through 162.1011, which best describes the specific service or item provided.

(B) Where there is one CPT, CDT, or HCPCS code that according to CPT, CDT, and HCPCS coding guidelines or standards, describes an array of services, the provider must use that code rather than itemizing the services under multiple codes. Providers must not "unbundle" services in order to increase payment or to mischaracterize the service.

(4) Prohibition of False Claims. No provider or its contracted agent (including billing service or billing agent) shall submit or cause to be submitted to the Department:

(a) Any false claim for payment or false PHP encounter;

(b) Any claim or PHP encounter altered in such a way as to result in a duplicate payment for a service that has already been paid;

(c) Any claim or PHP encounter upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form or PHP encounter format; or

(d) Any claim or PHP encounter for providing services or items that have not been provided.

(5) Third Party Resources.

(a) A provider shall not refuse to furnish covered services or items to an eligible client because of a third party's potential liability for the service or item.

(b) Providers must take all reasonable measures to ensure that the Department will be the payer of last resort, consistent with program-specific rules or contracts. If available, private insurance, Medicare, or worker's compensation must be billed before the provider submits a claim for payment to the Department, county, or PHP. For services provided to a Medicare and Medicaid dual eligible client, Medicare is the primary payer and the provider must first pursue Medicare payment (including appeals) prior to submitting a claim for payment to the Department, county or PHP. For services that are not covered by Medicare or other third party resource, the provider must follow the program-specific rules or contracts for appropriate billing procedures.

(c) When another party may be liable for paying the expenses of a client's injury or illness, the provider must follow program-specific rules or contract addressing billing procedures.

(6) Full Use of Alternate Community Resources.

(a) The Department will generally make payment only when other resources are not available for the client's needs. Full use must be made of reasonable alternate resources in the local community; and

(b) Providers must not accept reimbursement from more than one resource for the same service or item, except as allowed in program-specific or contract TPR requirements.

(7) Timely Submission of Claim or Encounter Data.

(a) Subsection (a) through (c) below apply only to the submission of claims data or other reimbursement document to the Department, including provider reimbursement by the Department pursuant to an agreement with a county. Unless requirements for timely filing provided for in program-specific rules or applicable contracts are more specific than the timely filing standard established in this rule, all claims for services or items must be submitted no later than 12 months from the date of service.

(b) A denied claim submitted within 12 months of the date of service may be resubmitted (with resubmission documentation, as indicated within the program-specific rules or contracts) within 18 months of the date of service. These claims must be submitted to the Department in writing. The provider must present documentation acceptable to the Department verifying the claim was originally submitted within 12 months of the date of service, unless otherwise stated in program-specific rules or contracts. Acceptable documentation is:

(A) A remittance advice or other claim denial documentation from the Department to the provider showing the claim was submitted before the claim was one year old; or

(B) A copy of a billing record or ledger showing dates of submission to the Department.

(c) Exceptions to the 12-month requirement that may be submitted to the Department are as follows:

(A) When the Department confirms the Department or the client's branch office has made an error that caused the provider not to be able to bill within 12 months of the date of service;

(B) When a court or an administrative law judge in a final order has ordered the Department to make payment;

(C) When the Department determines a client is retroactively eligible for Department program coverage and more than 12 months have passed between the date of service and the determination of the client's eligibility, to the extent authorized in the program-specific rules or contracts.

(d) PHP encounter data must be submitted in accordance with 45 CFR part 162.1001 and 162.1102 and the time periods established in the PHP contract with the Department.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0350

Payments and Overpayments

(1) Authorization of Payment.

(a) Some services or items covered by the Department require authorization before a service, item or level of care can be provided or before payment will be made. Providers are responsible for checking the appropriate program-specific rules or contracts for information on services or items requiring prior authorization and the process to follow to obtain authorization.

(b) Documentation submitted when requesting authorization must support the program-specific or contract justification for the service or item or level of care. A request is considered complete if it contains all necessary documentation and meets any other requirements as described in the appropriate program-specific rules or contract.

(c) The authorizing program will authorize the covered level of care or type of service or item that meets the client's program-eligible need. The authorizing program shall only authorize services which meet the program-specific or contract coverage criteria and for which the required documentation has been supplied. The authorizing program may request additional information from the provider to determine the appropriateness of authorizing the service or item or level of care within the scope of program coverage.

(d) Authorizing programs are not required to authorize services or to make payment for authorized services under the following circumstances:

(A) The client was not eligible at the time services were provided. The provider is responsible for checking the client's eligibility each time services are provided;

(B) The provider cannot produce appropriate documentation to support the level of care, type of service, or item meets the program-specific or contract criteria, or the appropriate documentation was not submitted to the authorizing program;

(C) The delivery of the service, item, or level of care has not been adequately documented as described in OAR 407-120-0370, Requirements for Financial, Clinical and Other Records, and the documentation in the provider's files is not adequate to determine the type, medical appropriateness, or quantity of services, or items provided or the required documentation is not in the provider's files;

(D) The services or items identified in the claim are not consistent with the information submitted when authorization was requested or the services or items provided are retrospectively determined not to be authorized under the program-specific or contract criteria;

(E) The services or items identified in the claim are not consistent with those which were provided;

(F) The services or items were not provided within the timeframe specified on the authorization of services document; or

(G) The services or items were not authorized or provided in compliance with the program-specific rules or contracts.

(e) Payment made for services or items described in subsections (d)(A) through (G) of this rule will be recovered.

(f) Retroactive Department Client Eligibility.

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(A) When a client is determined to be retroactively eligible for a Department program, or is retroactively disenrolled from a PHP or services provided after the client was disenrolled from a PHP, authorization for payment may be given if the conditions set forth in (A)(i) through (iv) of this section are met;

(i) The client was eligible on the date of service and the program-specific rules or contract authorize the Department to reimburse the provider for services provided to clients made retroactively eligible;

(ii) The services or items provided to the client meet all other program-specific or contract criteria and Oregon Administrative Rules;

(iii) The request for authorization is received by the appropriate Department branch or Department program office within 90 days of the date of service; and

(iv) The provider is enrolled with the Department on the date of service, or becomes enrolled with the Department no later than the date of service as provided in OAR 407-120-0320(11).

(B) Requests for authorization received after 90 days from date of service require all the documentation required in subsection (f)(A)(i), (ii) and (iv) and documentation from the provider stating that authorization could not have been obtained within 90 days of the date of service.

(g) Service authorization is valid for the time period specified on the authorization notice, but not to exceed 12 months, unless the client's benefit package no longer covers the service, in which case the authorization terminates on the date coverage ended.

(h) Service authorization for clients with other insurance or for Medicare beneficiaries is governed by program-specific rules or contracts.

(2) Payments.

(a) This rule only applies to covered services and items provided to eligible clients within the program-specific or contract covered services or items in effect on the date of service that are paid for by the Department based on program-specific or contract fee schedules or other reimbursement methods, or for services that are paid for by the Department at the request of a county for county-authorized services in accordance with program-specific or provider-specific rules or contracts.

(b) If the client's service or item is paid for by a PHP, the provider must comply with the payment requirements established under contract with that PHP, and in accordance with OAR 410-120 and 410-141, applicable to non-participating providers.

(c) The Department will pay for services or items based on the reimbursement rates and methods specified in the applicable program-specific rules or contract. Provider reimbursement on behalf of a county must include county service authorization information.

(d) Providers must accept, as payment in full, the amounts paid by the Department in accordance with the fee schedule or reimbursement method specified in the program-specific rules or contract, plus any deductible, co-payment, or coinsurance required to be paid by the client. Payment in full includes:

(A) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding the Department's allowable payment; or

(B) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the program-specific rules or contracts.

(e) The Department will not make payments for duplicate services or items. The Department will not make a separate payment or co-payment to a provider for services included in the provider's all-inclusive rate if the provider has been or will be reimbursed by other resources for the service or item.

(f) Prepayment and Post-Payment Review. Payment by the Department does not limit the Department or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical, clinical, program-specific or contract review, audit, or other post-payment review determines the service or item was not provided in accordance with applicable rules or contracts or does not meet the program-specific or contract criteria for quality of care, or appropriateness of the care, or authorized basis for payment.

(3) Recovery of Overpayments to Providers - Recoupments and Refunds

(a) The Department may deny payment or may deem payments subject to recovery as an overpayment if a review or audit determines the item or service was not provided in accordance with the Department's rules, agreement of contract, or does not meet the criteria for quality of care, or appropriateness of the care or payment. Related provider billings will also be denied or subject to recovery.

(b) If a provider determines that a submitted claim or encounter is incorrect, the provider must submit an individual adjustment request and refund the amount of the overpayment, if any, or adjust the claim or encounter, as is consistent with the requirements in program-specific rules or contracts.

(c) The Department may determine, as a result of review or other information, that a payment should be denied or that an overpayment has been made to a provider, which indicates that a provider may have submitted claims or encounters, or received payment to which the provider is not properly entitled. Such payment denial or overpayment determinations may be based on, but not limited to, the following grounds:

(A) The Department paid the provider an amount in excess of the amount authorized under a contract, state plan or Department rule;

(B) A third party paid the provider for services, or portion thereof, previously paid by the Department;

(C) The Department paid the provider for services, items, or drugs that the provider did not perform or provide;

(D) The Department paid for claims submitted by a data processing agent for whom a written provider or billing agent or billing service agreement was not on file at the time of submission;

(E) The Department paid for services and later determined they were not part of the client's program-specific or contract-covered services;

(F) Coding, data processing submission, or data entry errors;

(G) Medical, dental, or professional review determines the service or item was not provided in accordance with the Department's rules or contract or does not meet the program-specific or contract criteria for coverage, quality of care, or appropriateness of the care or payment;

(H) The Department paid the provider for services, items, or drugs when the provider did not comply with the Department's rules and requirements for reimbursement; or

(I) The provider submitted inaccurate, incomplete or untrue encounter data to the Department.

(d) Prior to identifying an overpayment, the Department may contact the provider for the purpose of providing preliminary information and requesting additional documentation. The provider must provide the requested documentation within the time frame requested.

(e) When an overpayment is identified, the Department will notify the provider in writing as to the nature of the discrepancy, the method of computing the overpayment, and any further action that the Department may take on the matter. The notice may require the provider to submit applicable documentation for review prior to requesting an appeal from the Department, and may impose reasonable time limits for when documentation must be provided for Department consideration. The notice will inform the provider of the process for appealing the overpayment determination.

(f) The Department may recover overpayments made to a provider by direct reimbursement, offset, civil action, or other legal action:

(A) The provider must make a direct reimbursement to the Department within 30 calendar days from the date of the notice of the overpayment, unless other regulations apply;

(B) The Department may grant the provider an additional period of time to reimburse the Department upon written request made within 30 calendar days from the date of the notice of overpayment. The provider must include a statement of the facts and reasons sufficient to show that repayment of the overpayment amount should be delayed pending appeal because:

(i) The provider will suffer irreparable injury if the overpayment notice is not delayed;

(ii) There is a plausible reason to believe that the overpayment is not correct or is less than the amount in the notice, and the provider has timely filed an appeal of the overpayment, or that the provider accepts the amount of the overpayment but is requesting to make repayment over a period of time;

(iii) A proposed method for assuring that the amount of the overpayment can be repaid when due with interest, including but not limited to a bond, irrevocable letter of credit, or other undertaking, or a repayment plan for making payments, including interest, over a period of time;

(iv) Granting the delay will not result in substantial public harm; and

(v) Affidavits containing evidence relied upon in support of the request for stay.

(C) The Department may consider all information in the record of the overpayment determination, including provider cooperation with timely provision of documentation, in addition to the information supplied in provider's request. If provider requests a repayment plan, the Department may require conditions acceptable to the Department before agreeing to a repayment plan. The Department must issue an order granting or denying a repayment delay request within 30 calendar days after receiving it;

(D) A request for hearing or administrative review does not change the date the repayment of the overpayment is due; and

(E) The Department may withhold payment on pending claims and on subsequently received claims for the amount of the overpayment when overpayments are not paid as a result of subsection (B)(i);

(f) In addition to any overpayment, the Department may impose a sanction on the provider in connection with the actions that resulted in the overpayment. The Department may, at its discretion, combine a notice of sanction with a notice of overpayment.

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(g) Voluntary submission of an adjustment claim or encounter transaction or an individual adjustment request or overpayment amount after notice from the Department does not prevent the Department from issuing a notice of sanction. The Department may take such voluntary payment into account in determining the sanction.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0360

Consequences of Non-Compliance and Provider Sanctions

(1) There are two classes of provider sanctions, mandatory and discretionary, that may be imposed for non-compliance with the provider enrollment agreement.

(2) Except as otherwise provided, the Department will impose provider sanctions at the direction of the assistant director of the Department's division whose budget includes payment for the services involved.

(3) Mandatory Sanctions. The Department shall impose mandatory sanctions and suspend the provider from participation in the Department's programs:

(a) When a provider has been convicted (as that term is defined in 42 CFR 1001.2) of a felony or misdemeanor related to a crime, or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws, or other disqualifying criminal conviction pursuant to program-specific rules or contract;

(b) When a provider is excluded from participation in federal or state health care programs by the Office of the Inspector General of DHHS or from the Medicare (Title XVIII) program of the Social Security Act as determined by the secretary of DHHS. The provider will be excluded and suspended from participation with the Department for the duration of exclusion or suspension from the Medicare program or by the Office of the Inspector General; or

(c) If the provider fails to disclose ownership or control information required under 42 CFR part 455.104 that is required to be reported at the time the provider submits a provider enrollment form or when there is a material change in the information that must be reported, or information related to business transactions required to be provided under 42 CFR part 455.105 upon request of federal or state authorities.

(4) Discretionary Sanctions. When the Department determines the provider fails to meet one or more of the Department's requirements governing participation in its programs the Department may impose discretionary sanctions. Conditions that may result in a discretionary sanction include, but are not limited to, when a provider has:

(a) Been convicted of fraud related to any federal, state, or locally financed health care program or committed fraud, received kickbacks, or committed other acts that are subject to criminal or civil penalties under the Medicare or Medicaid statutes;

(b) Been convicted of interfering with the investigation of health care fraud;

(c) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance or other potentially disqualifying crime, as determined under program-specific rules or contracts;

(d) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity either:

(A) Had his or her professional license suspended or revoked, or otherwise lost such license; or

(B) Surrendered his or her license while a formal disciplinary proceeding is pending before the relevant licensing authority.

(e) Been suspended or excluded from participation in any federal or state program for reasons related to professional competence, professional performance, or other reason;

(f) Billed excessive charges including, but not limited to, charging in excess of the usual charge, furnished items or services in excess of the client's needs or in excess of those services ordered by a provider, or in excess of generally accepted standards or quality that fail to meet professionally recognized standards;

(g) Failed to furnish necessary covered services as required by law or contract with the Department if the failure has adversely affected or has a substantial likelihood of adversely affecting the client;

(h) Failed to disclose required ownership information;

(i) Failed to supply requested information on subcontractors and suppliers of goods or services;

(j) Failed to supply requested payment information;

(k) Failed to grant access or to furnish as requested, records, or grant access to facilities upon request of the Department or the MFCU conducting their regulatory or statutory functions;

(l) In the case of a hospital, failed to take corrective action as required by the Department, based on information supplied by the QIO to prevent or

correct inappropriate admissions or practice patterns, within the time specified by the Department;

(m) In the case of a licensed facility, failed to take corrective action under the license as required by the Department within the time specified by the Department;

(n) Defaulted on repayment of federal or state government scholarship obligations or loans in connection with the provider's health profession education;

(A) Providers must have made a reasonable effort to secure payment;

(B) The Department must take into account access of beneficiaries to services; and

(C) Will not exclude a community's sole physician or source of essential specialized services;

(o) Repeatedly submitted a claim with required data missing or incorrect:

(A) When the missing or incorrect data has allowed the provider to:

(i) Obtain greater payment than is appropriate;

(ii) Circumvent prior authorization requirements;

(iii) Charge more than the provider's usual charge to the general public;

(iv) Receive payments for services provided to individuals who were not eligible; or

(v) Establish multiple claims using procedure codes that overstate or misrepresent the level, amount, or type of services or items provided.

(B) Does not comply with the requirements of OAR 410-120-1280.

(p) Failed to develop, maintain, and retain, in accordance with relevant rules and standards, adequate clinical or other records that document the client's eligibility and coverage, authorization (if required by program-specific rules or contracts), appropriateness, nature, and extent of the services or items provided;

(q) Failed to develop, maintain, and retain in accordance with relevant rules and standards, adequate financial records that document charges incurred by a client and payments received from any source;

(r) Failed to develop, maintain, and retain adequate financial or other records that support information submitted on a cost report;

(s) Failed to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rules, or regulations;

(t) Submitted claims or written orders contrary to generally accepted standards of professional practice;

(u) Submitted claims for services that exceed the requested or agreed upon amount by the OHP client, the client representative, or requested by another qualified provider;

(v) Breached the terms of the provider contract or agreement;

(x) Failed to comply with the terms of the provider certifications on the claim form;

(y) Rebated or accepted a fee or portion of a fee for a client referral; or collected a portion of a service fee from the client and billed the Department for the same service;

(z) Submitted false or fraudulent information when applying for a Department-assigned provider number, or failed to disclose information requested on the provider enrollment form;

(aa) Failed to correct deficiencies in operations after receiving written notice of the deficiencies from the Department;

(bb) Submitted any claim for payment for which the Department has already made payment or any other source unless the amount of the payment from the other source is clearly identified;

(cc) Threatened, intimidated, or harassed clients, client representatives, or client relatives in an attempt to influence payment rates or affect the outcome of disputes between the provider and the Department;

(dd) Failed to properly account for a client's personal incidental funds including, but not limited to, using a client's personal incidental funds for payment of services which are included in a medical facility's all-inclusive rates;

(ee) Provided or billed for services provided by ineligible or unsupervised staff;

(ff) Participated in collusion that resulted in an inappropriate money flow between the parties involved;

(gg) Refused or failed to repay, in accordance with an accepted schedule, an overpayment established by the Department;

(hh) Failed to report to Department payments received from any other source after the Department has made payment for the service; or

(ii) Collected or made repeated attempts to collect payment from clients for services covered by the Department, pursuant to OAR 410-120-1280.

(5) A provider who has been excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, must not submit claims for payment, either personally or through claims submitted by any billing agent or service, billing provider or other provider, for any services or supplies provided under the

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medical assistance programs, except those services or supplies provided prior to the date of exclusion, suspension or termination.

(6) Providers must not submit claims for payment to the Department for any services or supplies provided by an individual or provider entity that has been excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of exclusion, suspension or termination.

(7) When the provisions of sections (5) or (6) are violated, the Department may suspend or terminate the billing provider or any provider who is responsible for the violation.

(8) Type and Conditions of Sanction.

(a) A mandatory sanction imposed by the Department pursuant to section (3) may result in any of the following:

(A) The provider will either be terminated or suspended from participation in Department's programs. No payments of Title XIX, Title XXI or other federal or state funds will be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42CFR 1001.221 are met; or

(ii) Otherwise stated by the Department at the time of termination.

(B) No payments of Title XIX, Title XXI, or other federal or state funds will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved. The minimum duration of a suspension will be determined by the DHHS secretary, under the provisions of 42 CFR Parts 420, 455, 1001, or 1002. The state may suspend a provider from participation in the medical assistance programs longer than the minimum suspension determined by the DHHS secretary.

(b) The Department may impose the following discretionary sanctions on a provider pursuant to OAR 410-120-1400(4):

(A) The provider may be terminated from participation in the Department's programs. No payments of Title XIX, Title XXI or other federal or state funds will be made for services provided after the date of termination. Termination is permanent unless:

(i) The exceptions cited in 42 CFR 1001.221 are met; or

(ii) Otherwise stated by the Department at the time of termination.

(B) The provider may be suspended from participation in the Department's programs for a specified length of time, or until specified conditions for reinstatement are met and approved by the Department. No payments of Title XIX, Title XXI, or other federal or state funds will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved.

(C) The Department may withhold payments to a provider;

(D) The provider may be required to attend provider education sessions at the expense of the sanctioned provider;

(E) The Department may require that payment for certain services are made only after the Department has reviewed documentation supporting the services;

(F) The Department may require repayment of amounts paid or provide for reduction of any amount otherwise due the provider; and

(G) Any other sanctions reasonably designed to remedy or compel future compliances with federal, state, or Department regulations.

(c) The Department will consider the following factors in determining the sanction to be imposed. Factors include but are not limited to:

(A) Seriousness of the offense;

(B) Extent of violations by the provider;

(C) History of prior violations by the provider;

(D) Prior imposition of sanctions;

(E) Prior provider education;

(F) Provider willingness to comply with program rules;

(G) Actions taken or recommended by licensing boards or a QIO;

(H) Adverse impact on the availability of program-specific or contract covered services or the health of clients living in the provider's service area; and

(I) Potential financial sanctions related to the non-compliance may be imposed in an amount that is reasonable in light of the anticipated or actual harm caused by the non-compliance, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

(d) When a provider fails to meet one or more of the requirements identified in OAR 407-120-0300 through 407-120-0380, the Department, in its sole discretion, may immediately suspend the provider's Department assigned billing number and any electronic system access code to prevent public harm or inappropriate expenditure of public funds.

(A) The provider subject to immediate suspension is entitled to a contested case hearing as outlined in ORS 183 to determine whether the provider's Department assigned number and electronic system access code will be revoked; and

(B) The notice requirements described in section (5) of this rule do not preclude immediate suspension in the Department's sole discretion to prevent public harm or inappropriate expenditure of public funds. Suspension may be invoked immediately while the notice and contested case hearing rights are exercised.

(e) If the Department sanctions a provider, the Department will notify the provider by certified mail or personal delivery service of the intent to sanction. The notice of immediate or proposed sanction will identify:

(A) The factual basis used to determine the alleged deficiencies and a reference to the particular sections of the statutes and rules involved;

(B) Explanation of actions expected of the provider;

(C) Explanation of the Department's intended action;

(D) The provider's right to dispute the Department's allegations and submit evidence to support the provider's position;

(E) The provider's right to appeal the Department's proposed actions pursuant to ORS 183;

(F) A statement of the authority and jurisdiction under which the appeal is to be held, with a description of the procedure and time to request an appeal; and

(G) A statement indicating whether and under what circumstances an order by default may be entered.

(f) If the Department decides to sanction a provider, the Department will notify the provider in writing at least 15 days before the effective date of action, except in the case of immediate suspension to avoid public harm or inappropriate expenditure of funds.

(g) The provider may appeal the Department's immediate or proposed sanction or other actions the Department intends to take. The provider must appeal this action separately from any appeal of audit findings and overpayments. These include, but are not limited to, the following:

(A) Termination or suspension from participation in the Medicaid-funded medical assistance programs;

(B) Termination or suspension from participation in the Department's state-funded programs; and

(C) Revocation of the provider's Department assigned provider number.

(h) Other provisions:

(A) When a provider has been sanctioned, all other provider entities in which the provider has ownership (five percent or greater) or control of, may also be sanctioned;

(B) When a provider has been sanctioned, the Department may notify the applicable professional society, board of registration or licensure, federal or state agencies, OHP, PHP's and the National Practitioner Data Base of the findings and the sanctions imposed;

(C) At the discretion of the Department, providers who have previously been sanctioned or suspended may or may not be re-enrolled as Department providers;

(D) Nothing in this rule prevents the Department from simultaneously seeking monetary recovery and imposing sanctions against the provider;

(E) Following a contested case hearing in which a provider has been found to violate ORS 411.675, the provider shall be liable to the Department for treble the amount of payments received as a result of each violation.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0370

Requirements for Financial, Clinical, and Other Records

(1) The Department shall analyze and monitor the operation of its programs and audit and verify the accuracy and appropriateness of payment, utilization of services, or items.

(2) The Department shall comply with client coverage criteria and requirements for the level of care or service or item authorized or reimbursed by the Department and the quality of covered services or items and service or item delivery, and access to covered services or items.

(3) The provider and the provider's designated billing service or other entity responsible for the maintenance of financial, service delivery, and other records must:

(a) Develop and maintain adequate financial and service delivery records and other documentation which supports the specific care, items, or services for which payment has been requested. Payment will be made only for services that are adequately documented. The following documentation must be completed before the service is billed to the Department:

(A) All records documenting the specific service provided, the number of services or items comprising the service provided, the extent of the service provided, the dates on which the service was provided, and identification of the individual who provided the service. Patient account and financial records must also include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. For cost reimbursed services, the provider must maintain

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adequate records to thoroughly and accurately explain how the amounts reported on the cost statement were determined.

(B) Service delivery, clinical records, and visit data, including records of all therapeutic services, must document the basis for service delivery and record visit data if required under program-specific rules or contracts. A client's clinical record must be annotated each time a service is provided and signed or initialed by the individual providing the service or must clearly identify the individual providing the service. Information contained in the record must be sufficient in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation found in this rule, program-specific rules, and any pertinent contracts.

(C) All information about a client obtained by the provider or its officers, employees, or agents in the performance of covered services, including information obtained in the course of determining eligibility, seeking authorization, and providing services, is confidential. The client information must be used and disclosed only to the extent necessary to perform these functions.

(b) Implement policies and procedures to ensure confidentiality and security of the client's information. These procedures must ensure the provider may release such information in accordance with program-specific federal and state statutes or contract, which may include but is not limited to, ORS 179.505 to 179.507, 411.320, 433.045, 42 CFR part 2, 42 CFR part 431 subpart F, 45 CFR 205.50, and ORS 433.045(3) with respect to HIV test information.

(c) Ensure the use of electronic record-keeping systems does not alter the requirements of this rule.

(A) A provider's electronic record-keeping system includes electronic transactions governed by HIPAA transaction and code set requirements and records, documents, documentation, and information include all information, whether maintained or stored in electronic media, including electronic record-keeping systems, and information stored or backed up in an electronic medium.

(B) If a provider maintains financial or clinical records electronically, the provider must be able to provide the Department with hard-copy versions. The provider must also be able to provide an auditable means of demonstrating the date the record was created and the identity of the creator of a record, the date the record was modified, what was changed in the record and the identity of any individual who has modified the record. The provider must supply the information to individuals authorized to review the provider's records under subsection (e) of this rule.

(C) Providers may comply with the documentation review requirements in this rule by providing the electronic record in an electronic format acceptable to an authorized reviewer. The authorized reviewer must agree to receive the documentation electronically.

(d) Retain service delivery, visit, and clinical records for seven years and all other records described in this rule, program-specific rules and contract for at least five years from the date of service.

(e) Furnish requested documentation (including electronically recorded information or information stored or backed up in an electronic medium) immediately or within the time-frame specified in the written request received from the Department, the Oregon Secretary of State, DHHS or other federal funding agency, Office of Inspector General, the Comptroller General of the United States (for federally funded programs), MFCU (for Medicaid-funded services or items), or the client representative. Copies of the documents may be furnished unless the originals are requested. At their discretion, official representatives of the Department, Medicaid Fraud Unit, DHHS, or other authorized reviewers may review and copy the original documentation in the provider's place of business. Upon written request of the provider, the program or the unit, may, at their sole discretion, modify or extend the time for provision of such records if, in the opinion of the program or unit good cause for such extension is shown. Factors used in determining if good cause exists include:

(A) Whether the written request was made prior to the deadline for production;

(B) If the written request is made after the deadline for production, the amount of time elapsed since that deadline;

(C) The efforts already made to comply with the request;

(D) The reasons the deadline cannot be met;

(E) The degree of control that the provider had over its ability to produce the records prior to the deadline; and

(F) Other extenuating factors.

(f) Access to records, inclusive of clinical charts and financial records does not require authorization or release from the client, unless otherwise required by more restrictive state and federal regulations if the purpose of such access is:

(A) To perform billing review activities;

(B) To perform utilization review activities;

(C) To review quality, quantity, medical appropriateness of care, items, and services provided;

(D) To facilitate service authorization and related services;

(E) To investigate a client's hearing request;

(F) To facilitate investigation by the MFCU or DHHS; or

(G) To review records necessary to the operation of the program.

(g) Failure to comply with requests for documents within the specified time-frame means that the records subject to the request may be deemed by the Department not to exist for purposes of verifying appropriateness of payment, clinical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and subjects the provider to possible denial or recovery of payments made by the Department or to sanctions.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

407-120-0380

Fraud and Abuse

(1) Providers are required to promptly refer all suspected fraud and abuse, including fraud or abuse by its employees or in Department administration, to the MFCU, or to the Department's audit unit.

(2) Providers must permit the MFCU and the Department to inspect, copy, evaluate, or audit books, records, documents, files, accounts, and facilities, without charge, as required to investigate allegations or incidents of fraud or abuse.

(3) Providers aware of suspected fraud or abuse by a client must report the incident to the Department's fraud unit.

(4) The Department may share information for health oversight purposes with the MFCU and other federal or state health oversight authorities.

(5) The Department may take actions necessary to investigate and respond to substantiated allegations of fraud and abuse, including but not limited to suspending or terminating the provider from participation in the Department's programs, withholding payments or seeking recovery of payments made to the provider, or imposing other sanctions provided under state law or regulations. Such actions by the Department may be reported to CMS or other federal or state entities as appropriate.

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135, 414.145

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08; DHSD 6-2008(Temp), f. & cert. ef. 7-1-08 thru 12-27-08

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

Rule Caption: Changing OAR affecting screening activities for reports of child abuse or neglect.

Adm. Order No.: CWP 5-2008(Temp)

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08 thru 12-24-08

Notice Publication Date:

Rules Amended: 413-015-0205

Subject: OAR 413-015-0205 about the required screening activities is being amended to implement the provisions of Senate Bill 379 (2007 Or Laws ch 501) by restating the required screening activities when the report is an allegation of child abuse or neglect that occurred in a Children's Care Provider (CCP). This rule is also being amended to restate the required screening activities regarding explanations to reporters of allegations of child abuse or neglect.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0205

Screening Activities

The screener must complete the following activities:

(1) Gather information. When gathering information, the screener must do both of the following:

(a) Accept reports of child abuse and neglect regardless of where the child resides or where the alleged child abuse or neglect may have occurred. If the report is about a child that does not reside in the county where the report is received, the screener must forward the report to the local child welfare office in the county or state where the child resides. The screener must forward the report on the same day the report is received and confirm that the report has been successfully forwarded.

(b) Accept and handle anonymous reports of child abuse and neglect in the same manner as other reports, gather the same information from the anonymous reporter as the screener would from any other reporter, and encourage the reporter to provide identifying information.

(2) If appropriate, refer the person to community services and resources.

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(3) Determine the type of information received, Child Protective Services, Family Support Services, or Interstate Compact on the Placement of Children, and where and when to document the information received.

(a) Child Protective Services. This type of information is related to reports of child abuse or neglect.

(A) Child Protective Services information is documented in FACIS using the Guided Assessment Process (GAP).

(B) The time line for screeners to complete and document their actions, and document information gathered, unless a CPS supervisor grants the screener an extension as provided in OAR 413-015-0220, is:

(i) Immediately when a within 24 hours response time line is assigned;

(ii) Within the same day when a within five days response time line is assigned; or

(iii) No later than the next working day after the screening determination is made when the report is closed at screening.

(b) Family Support Services. This type of information is not a report of alleged child abuse or neglect, and it does not include information that indicates a child is unsafe.

(A) This information is documented in FACIS using a screening form.

(B) The time line for screeners to complete and document their actions, and document information gathered is within two days of receiving the request for services.

(C) Family Support Services information falls within one of the categories described below:

(i) Request for Placement — Information falls within this category when:

(I) A parent or legal guardian requests out-of-home placement of their child due solely to obtain services for the emotional, behavioral, or mental disorder or developmental or physical disability of the child;

(II) The parent or legal guardian requests the Department take legal custody of their child; or

(III) The court has ordered a pre-adjudicated delinquent into the care of the Department.

(ii) Request for Independent Living Program Services — Information falls within this category when a former foster child qualifies for Independent Living Program (ILP) services, is not a member on an open case, and requests to enroll in the Department's ILP.

(iii) Request for Post Legal Adoption and Post Guardianship Services — Information falls within this category when a family requests post legal adoption or post guardianship services, if the adoption or guardianship occurred through the Department.

(iv) Request for Voluntary Services — Information falls within this category when it does not meet the criteria in subparagraphs (i), (ii), or (iii) of this paragraph, a parent or caregiver requests assistance with a child in the home, and all of the following apply:

(I) Other community resources have been utilized and determined to be ineffective.

(II) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(III) The parent or caregiver is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical condition or a mental health diagnosis.

(IV) The parent's or caregiver's inability to fulfill parental responsibilities is temporary and immediate, and will be alleviated with short term services or short term services will transition the family to community services.

(V) A Child Welfare program manager approves the request for voluntary services.

(c) Request for Interstate Compact on the Placement of Children (ICPC) supervision and services. This type of information is not a report of child abuse or neglect. Information falls within the ICPC category when a screener receives a request from central office to provide ICPC supervision and services. This information is documented in FACIS using a screening form.

(4) When the screener receives Child Protective Services information, the screener must complete the screening activities described below.

(a) The screener must use the GAP screening template to collect the following information, which is critical to effectively identify if there is a report of child abuse or neglect as defined in ORS 419B.005 and if the information alleges that behavior, conditions, or circumstances could result in harm to the child:

(A) The type of alleged child abuse or neglect and the circumstances surrounding the report;

(B) How the alleged child abuse or neglect or the surrounding circumstances are reported to affect the safety of the child;

(C) Information that identifies how the child is vulnerable; and

(D) Reported parent or caregiver functioning and behavior.

(b) After completing and documenting the information required in subsection (a) of this section, if the report is an allegation of child abuse or neglect that occurred in a Children's Care Provider (CCP), the screener must complete the requirements in paragraphs (A) through (C) of this subsection. CPS screening activities for CCP referrals are complete after the completion of the activities in paragraphs (A) through (C) of this subsection and additional screening activities in this rule do not apply:

(A) Immediately pend the screening information to the OIT screener's workload;

(B) Immediately send an e-mail to the OIT screener to let them know that a FACIS screening report has been assigned to their workload; and

(C) When the report is new information on an open Child Welfare case:

(i) Notify the CPS supervisor;

(ii) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in FACIS case notes; and

(iii) Complete notification on the same day the information is received.

(c) Gather information from individuals who can provide firsthand information necessary to determine the appropriate Department response. This may include individuals who have regular contact with the child, doctors or others who have evaluated or maintain records on the child, people who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior, and those who have records or reason to know things about the parent or caregiver as a result of their involvement with or exposure to the parent or caregiver.

(d) Research Department history of every identified child, parent, caregiver, and household member for information about current or previous Department involvement relevant to the current child abuse or neglect report. If the research reveals an "unable to locate" disposition that has not been assessed, the screener must reference that referral number and those allegations in the current referral summary.

(e) Inquire regarding possible Indian or Alaskan Native heritage (for further direction see OAR 413-015-0215(5)).

(f) Request relevant information when available and appropriate from law enforcement agencies (LEA), including domestic disturbance calls, arrests, warrants, convictions, restraining orders, probation status, and parole status.

(g) Determine the location and corresponding law enforcement jurisdiction of the family's residence and the site where the alleged child abuse or neglect may have occurred.

(h) Immediately comply with Child Welfare Policy I-B.2.2.3 when information is related to a Department approved and certified home that is a foster home, relative caregiver home, or adoptive home.

(i) Immediately comply with Child Welfare Policy II-E.1, "Child-Caring Agencies", OAR 413-210-0000 to 413-210-0250 when information is related to a licensed child caring agency.

(j) Immediately comply with the Child Welfare "Fatality Protocol" when information is related to the death of a child.

(5) Explain to reporters:

(a) That the Department will not disclose the identity of the reporter unless disclosure is to an LEA for purposes of investigating the report, disclosure is required because the reporter may need to testify as a witness in court, or the court orders the Department to disclose the identity of the reporter;

(b) That anyone making a report of child abuse or neglect in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report;

(c) The Department's decisions about paragraphs (A) through (C) of this subsection. If the decisions have not been made when the report is completed, the screener must notify the reporter that, if contact information is provided, diligent efforts will be made to contact him or her at a later date and inform him or her of the decisions:

(A) Whether contact with the child was made;

(B) Whether the Department determined child abuse occurred; and

(C) Whether services will be provided.

(d) If applicable, that the information reported does not meet the screening criteria to be documented and retained in the child abuse information system; and

(e) That mandatory reporters should consider maintaining a record of their report to document compliance with ORS 419B.010 and 419B.015.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.020

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 5-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08

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Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 6-2008(Temp)

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08 thru 12-24-08

Notice Publication Date:

Rules Amended: 413-015-0409, 413-015-0415

Subject: OAR 413-015-0409 about the exceptions to completing the child protective services (CPS) assessment activities is being amended to restate the Department's policy on the exceptions to completing the required CPS activities, to clarify the Department's policy and make the Department's policy consistent with the Department's practice.

OAR 413-015-0415 about the CPS assessment activities is being amended to restate the Department's policy regarding the required CPS assessment activities, to clarify the Department's policy and make the Department's policy consistent with the Department's practice. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch — (503) 945-6067

413-015-0409

Exception to Completing CPS Assessment Activities

(1) The only exception to completing the CPS assessment activities required by these rules on an assigned referral is when a CPS worker, in consultation with a CPS supervisor or designee, determines within the response time line that the referral does not require a CPS assessment because:

(a) The referral was opened in error;

(b) The CPS worker has, through reliable collateral contacts, received information that indicates the report does not constitute a report of child abuse or neglect as defined in ORS 419B.005; or

(c) The referral content will be addressed in an open CPS assessment.

(2) The CPS worker must document the determination and explain the basis for the determination that a CPS assessment is not necessary.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08

413-015-0415

CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by Child Welfare for historical information on the family and the child that may be useful in completing the CPS assessment;

(C) Thoroughly review available Self Sufficiency records; and

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Addressing Prior Allegations that Have Not Been Assessed

Because the Department was Unable to Locate the Family. The assigned CPS worker must address in the current assessment any allegations not previously assessed because the Department was unable to locate the family as follows:

(a) Discuss the prior unassessed allegations during interviews;

(b) Consider all information about prior unassessed allegations in the current safety analysis; and

(c) Document the consideration of prior unassessed allegations in interviews, observations, and dispositional findings.

(3) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned self sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with Child Welfare.

(4) Consult with CPS Supervisor.

(a) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

(C) When a referral involves allegations that child abuse or neglect occurred in a licensed child caring agency;

(D) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(E) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(F) When the referral involves a child fatality;

(G) When making dispositions in complicated or sensitive situations or cases;

(H) When closing an assessment with the disposition of "unable to locate"; or

(I) Prior to a decision to close a case during or at the end of the CPS assessment.

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(5) Contact and Work with Other Entities. The CPS worker may need to work with representatives of other entities to develop a sufficient protective action or ongoing safety plan, to analyze safety threats, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must contact and work with other entities as follows:

(A) Child Care Division. The CPS worker must notify and coordinate with the Child Care Division when a report involves a registered day-care home or a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Seniors and People with Disabilities Division (SPD).

(i) The CPS worker must notify the Office of Investigations and Training with the Department when the allegation involves a child with developmental disabilities in an SPD licensed group home.

(ii) The CPS worker must make a report to the Office of Investigations and Training with the Department when the CPS worker has reasonable cause to believe:

(I) That any person 18 years of age or older with a mental illness or a developmental disability whom the CPS worker comes into contact with, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness or developmental disability.

(iii) The CPS worker must make a report to SPD when the CPS worker has reasonable cause to believe:

(I) That any person 65 years of age or older with whom the CPS worker comes into contact, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 65 years of age or older.

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(D) Child Caring Agency Licensing Program. The CPS worker must notify the Department's Child Caring Agency Licensing Program when the allegation involves a licensed child caring facility.

(E) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

(F) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(G) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment which are summarized in 413-015-0400. Whenever possible, the CPS worker must coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behavior, circumstances, or situation could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(H) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker should confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(I) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(6) Obtain Interpreters and Translation. The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(7) Determine ICWA Status and Comply with ICWA, if Applicable. The CPS worker must initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the CPS worker must:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Federally recognized tribes must be notified within 24 hours after information alleging abuse or neglect is received by Child Welfare.

(c) If the Indian child is enrolled or eligible for enrollment in a federally recognized tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local Department ICWA liaison, a supervisor, or the ICWA manager if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(e) Make a diligent attempt to address the following when determining the placement resource:

(A) Contact the Tribe's social services department;

(B) Search for relative resources;

(C) Search for available Indian homes; and

(D) Contact other Indian tribes and other Indian organizations with available placement resources; and

(f) Unless the Indian child's tribe has established a different order of preference, comply with the ICWA placement preference, which is:

(A) Placement with a member of Indian child's extended family.

(B) Placement with a foster family that is licensed, approved or specified by the Indian child's tribe.

(C) Placement with an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) Placement with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(8) Determine Refugee Status and Comply with the Refugee Children Act, if applicable. During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child:

(A) The CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, and the reasons why the child or parents came to the United States. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(B) The CPS worker is not required to determine whether the child is a refugee child, but if the child appears to be a refugee child the CPS worker must proceed as if they are, until or unless it is known that the child is not a refugee child.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) No refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

(A) Natural parents.

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- (B) Extended family member.
- (C) Members from the same cultural heritage.
- (D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

- (A) The preferred placement presents safety threats to the child;
 - (B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or
 - (C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.
- (g) The CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the Cultural Competency Coordinator for Child Welfare to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:
- (A) Invite the CPS supervisor to the staffing; and
 - (B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(9) **Take Photographs.** The CPS worker must, during the CPS assessment, take photographs and document, as necessary, child abuse, neglect, and observable safety threats.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment.

(b) As provided in ORS 419B.028, if the CPS worker conducting a CPS assessment observes a child who has suffered suspicious physical injury and the CPS worker has a reasonable suspicion that the injury may be the result of abuse, the CPS worker, in accordance with the protocols and procedures of the county multi-disciplinary team described in 418.747, will immediately photograph or cause to have photographed the suspicious physical injuries. Regardless of whether the child has previously been photographed or assessed during a CPS assessment, the CPS worker will photograph or cause to be photographed any suspicious injuries if the CPS worker has a reasonable suspicion the suspicious injuries are the result of abuse:

- (A) During the assessment of a new allegation of abuse; and
 - (B) Each time, during the assessment, an injury is observed that was not previously observed by the assigned CPS worker.
- (c) When a child is photographed pursuant to subsection (b) of this section:

(A) The person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

- (i) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and
- (ii) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the child welfare record labeled with the case name, case number, sequence number, person letter, child's name, and date taken.

(B) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child's case.

(d) The CPS worker must document injuries, hazardous environments, and any observable safety threats in the assessment narrative by use of photographs, written description, or illustrations.

(e) Photographs of the anal or genital region may be taken only by medical personnel.

(10) **Obtain Medical Assessment.** The CPS worker must, during the CPS assessment as required in this section, facilitate a medical assessment of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety threats.

(a) When the CPS worker determines that the child is in need of a medical assessment as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) If a person conducting an assessment under ORS 419B.020 observes a child who has suffered suspicious physical injury and the person has a reasonable suspicion that the injury may be the result of abuse, the person must, in accordance with the protocols and procedures of the county multi-disciplinary team described in 418.747, ensure that:

(A) A designated medical professional conducts a medical assessment within 48 hours of the observation of the suspicious physical injury, or sooner if dictated by the child's medical needs; or

(B) An available physician conducts a medical assessment if, after reasonable efforts to locate a designated medical professional, a designated medical professional is not available to conduct a medical assessment with-

in 48 hours. The CPS worker is required to document in FACIS efforts to locate the designated medical professional when an available physician is used.

(c) The CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region.

(d) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child to a medical facility, which may include calling 911. The CPS worker must also make arrangements for medical examination of a child for mild or moderate physical trauma.

(e) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information."

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:

(i) The parent or caregiver refuses to obtain needed medical examination or treatment;

(ii) The parent or caregiver may flee with the child;

(iii) Delaying medical examination or treatment could harm the child; or

(iv) The CPS worker has reason to believe medical examination will reveal evidence of child abuse or neglect.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(f) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with Child Welfare Policy I-B.2.2.2, "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(g) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with Child Welfare Policy I-B.5.1, "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(h) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(i) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(11) Obtain Psychological and Psychiatric Evaluations.

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety threats when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.747, 418.785, 419B.005 -419B.050, 2007 OL Ch. 674

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08

ADMINISTRATIVE RULES

Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 7-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08

Notice Publication Date: 4-1-2008

Rules Adopted: 413-015-0520, 413-015-0525, 413-015-0530, 413-015-0535, 413-015-0540, 413-015-0545, 413-015-0550, 413-015-0555, 413-015-0560, 413-015-0565

Rules Amended: 413-015-0210, 413-015-0211, 413-015-0212, 413-015-0215, 413-015-0220, 413-015-0405, 413-015-1000

Subject: The Department is amending administrative rules in Child Welfare Policy I-AB.2 about screening, Child Welfare Policy I-AB.4 about Child Protective Services (CPS) assessment, and Child Welfare Policy I-AB.5 about the CPS assessment disposition; and adopting OAR 413-015-0520 through 413-015-0565 (Child Welfare Policy I-AB.4.1 about day care facility investigations) to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008.

OAR 413-015-0210 about the Department response and timelines after screening activities are completed is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by adding types of agencies for which a report requires a child protective services assessment and clarifying language about required information to be gathered by screener, the criteria for a closed at screening decision, and the response time.

OAR 413-015-0211 about additional screening activities, OAR 413-015-0215 about notifications to specific agencies or entities, and OAR 413-015-0220 about screening extensions are being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy regarding screening activities, notifications in the screening process and screening extensions.

OAR 413-015-0212 about the required consultation between a screener and a CPS supervisor is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by including day care facility investigation, additional Guided Assessment Process (GAP) screenings on other children, and use of "unable to locate" disposition as reasons to consult with a CPS supervisor.

OAR 413-015-0405 about the CPS response time lines is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy regarding the response time to a CPS assessment.

OAR 413-015-0520, 413-015-0525, 413-015-0530, 413-015-0535, 413-015-0540, 413-015-0545, 413-015-0550, 413-015-0555, 413-015-0560, and 413-015-0565 about day care investigations are being adopted to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, which mandates that the Department respond to child abuse and neglect reports in a child care facility, decide roles of the investigation with law enforcement, and notify the Child Care Division of the receipt of a report and the outcome, and to make permanent temporary rules that were filed on January 1, 2008. These rules provide the Department's policy regarding the investigation of child abuse or neglect in a day care facility.

OAR 413-015-1000 about the disposition of a CPS assessment is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy for the dispositions of CPS assessments that are classified as "unable to locate" and "No CPS assessment completed."

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0210

Determining Department's Response and Required Time Lines for CPS Information

(1) After the screener completes screening activities required by OAR 413-015-0205, the screener must determine the Department response, either CPS assessment required or close at screening. If a CPS assessment

is required, the screener must then determine the time line for the Department response, either within 24 hours or within five calendar days.

(2) CPS assessment required. A CPS assessment is required if:

(a) The screener determines that information received constitutes a report of child abuse or neglect, as defined in ORS 419B.005, and the information indicates:

(A) The alleged perpetrator is a legal parent of the alleged child victim;

(B) The alleged perpetrator resides in the alleged child victim's home;

(C) The alleged perpetrator may have access to the alleged child victim, and the parent or caregiver may not be able or willing to protect the child; or

(D) The alleged child abuse occurred in a day care facility, the home of a Department certified foster parent or relative caregiver, or a private child caring agency that is not a Children's Care Provider (CCP).

(b) A Tribe or LEA requests assistance from Child Welfare with an investigation of child abuse or neglect, and a CPS supervisor agrees that assistance from Child Welfare is appropriate.

(3) If the screener determines that a CPS assessment is required, the screener must:

(a) Determine the CPS assessment response time line. The time line for the Department response refers to the amount of time between when the report is received at screening and when the CPS worker is required to make an initial contact. When determining the response time, the screener must take into account the location of the child, how long the child will be in that location, and access that others have to the child.

(A) Within 24 hours: This response time line is required, unless paragraph (B) of this subsection applies, when the information received constitutes a report of child abuse or neglect as defined in ORS 419B.005 in which a child is alleged to be unsafe.

(B) Within five calendar days: This response time line must only be used when the screener can clearly document how the information indicates the child's safety will not be compromised by not responding within 24 hours and whether an intentional delay to allow for a planned response is less likely to compromise the safety of the child.

(b) Complete a GAP screening form immediately when a within 24 hour response time line is assigned or the same day when a within five calendar days response time is assigned, unless a CPS supervisor grants an extension as provided in OAR 413-015-0220.

(c) Refer the CPS assessment to the appropriate county as described in OAR 413-015-0213.

(4) Close at Screening: A report will be closed at screening if one of the following subsections applies:

(a) The screener determines that information received:

(A) Does not constitute a report of child abuse or neglect, as defined in ORS 419B.005, and the screener determines that the information describes family conditions, behaviors, or circumstances that pose a risk to a child but does not meet the definition of a safety threat.

(B) Is third party child abuse or neglect that does not require a CPS assessment because the alleged perpetrator does not have access to the child, and the parent or caregiver is willing and able to protect the child; or

(C) Is a report that there are no children in the home and:

(i) An expectant mother is abusing substances during her pregnancy;

(ii) An expectant mother or a household member has had his or her parental rights to another child terminated; or

(iii) An expectant mother or a household member is known to have conditions or circumstances that would endanger a newborn child.

(b) The screener, after extensive efforts, is unable to obtain sufficient information to locate the child. Name and exact address are not necessary if a location is obtained.

(5) If a report is closed at screening, the screener must:

(a) Document the current information that supports the decision to close the report at screening.

(b) Decide whether other services are appropriate and make service or resource referrals, as necessary. Document what service or resource referrals are made, if any.

(c) Make diligent efforts to contact the reporter if contact information was provided and when the reporter was not informed of the following information prior to completing the report.

(A) Whether contact with the child was made;

(B) Whether the Department determined child abuse occurred; and

(C) Whether services will be provided.

(d) Complete a GAP screening form no later than the next working day after the screening determination is made, unless a CPS supervisor grants an extension, as provided in OAR 413-015-0220.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

ADMINISTRATIVE RULES

413-015-0211

Additional Screening Activities

In the specific circumstances described below, the screener must complete additional activities to complete the screening process.

(1) The screener receives information on an open CPS assessment.

(a) When a screener receives duplicate information (same alleged victim, same alleged perpetrator, same allegation of child abuse or neglect, and same incident dates) on an open CPS assessment, the screener must:

(A) Inform the reporter that a new report will not be assigned because the information has already been received;

(B) Provide the reporter with the assigned caseworker's name and phone number; and

(C) Provide contact information about the reporter and any information the screener received to the assigned caseworker.

(b) When a screener receives information that constitutes a new report of child abuse or neglect as defined in ORS 419B.005 on an open CPS assessment:

(A) The screener must document the information in a new GAP screening form unless paragraph (B) of this subsection applies.

(B) If a CPS worker assigned to an open CPS assessment reports child abuse or neglect in the household that is the subject of the open CPS assessment, the screener must direct the CPS worker to incorporate the new information into the existing, open CPS assessment.

(2) The screener receives new information on an open Child Welfare case.

(a) When a screener receives new information on an open Child Welfare case, the screener must:

(A) Consult with a CPS supervisor;

(B) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in FACIS case notes; and

(C) Complete notification on the same day the information is received.

(b) When a screener receives a new report of child abuse or neglect, as defined in ORS 419B.005, but there is no open CPS assessment, the screener must document the information in a new GAP screening form.

(c) The information received by a screener on an open Child Welfare case that will not be documented in the GAP but must be documented in FACIS case notes includes:

(A) Additional information on an open case that does not meet the criteria for a new CPS assessment or closed at screening;

(B) When an in-home ongoing safety plan is violated, but the violation is not a new incident of child abuse or neglect;

(C) Reports of an ongoing concern in an open case, which Child Welfare is currently addressing;

(D) Reports of child runaways; and

(E) Any requests for case information received by the screener.

(3) When a screener receives information related to the home of a Department certified foster parent or relative caregiver, the screener must notify and document that the screener has notified each assigned case worker, assigned certifier, and their respective supervisors of all information received (see Child Welfare Policy I-B.2.2.3, "Department Responsibilities During Screening and Assessment of a Child Abuse or Neglect Report Involving the Home of a Department Certified Foster Parent or Relative Caregiver", OAR 413-200-0404 to 413-200-0424).

(4) When a screener receives the report of a child fatality alleged to be the result of abuse or neglect or involving a child known to the Department, the screener must:

(a) Consult with a CPS supervisor;

(b) Refer to the Child Welfare "Fatality Protocol";

(c) Complete a GAP screening form documenting the "allegation" as a "fatality" in addition to other allegations that apply;

(d) Notify the CPS consultant; and

(e) Complete subsections (a) through (d) of this section even when there are no siblings to the deceased child and no other children in the home where the fatality occurred.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0212

Screener Consultation with a CPS Supervisor

Screeners may consult with a CPS supervisor about any screening determination. Screeners must consult with a CPS supervisor in each of the following situations:

(1) A report of child abuse or neglect involving a child, parent, caregiver, or perpetrator who was a child, parent, caregiver, or perpetrator in a CPS assessment that resulted in a founded disposition in the preceding six months.

(2) A review of Department records on a family that is the subject of a child abuse or neglect report finds multiple consecutive reports were closed at screening, and the information received in the current report, in combination with the prior reports regarding the same family, may meet the criteria to refer the report for a CPS assessment.

(3) A new report involving a family that has an open Child Welfare case.

(4) A report involving the home of a Department certified foster parent or relative caregiver.

(5) A report involving a licensed child-caring agency.

(6) A report involving a day care facility.

(7) A report of a child fatality.

(8) A decision not to refer for assessment a report of a baby who is born with substances in his or her system.

(9) A report of child abuse or neglect in which a community partner or an employee of any program, office, or division of the Department or the Oregon Youth Authority is the alleged perpetrator.

(10) A report of child abuse or neglect that is expected to receive media attention or that already is being reported by the media.

(11) A decision that an additional GAP screening form is needed because the reported information alleges a threat of harm to additional children in other families.

(12) A review of Department history reveals a prior allegation that has not been assessed because the Department was unable to locate the family.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0215

Notifications to Specific Agencies or Entities

The screener must notify specific agencies or entities of reports that the screener determines will be referred for a CPS assessment or will be closed at screening.

(1) Law Enforcement Agency (LEA). The screener must cross report to LEA as required by OAR 413-015-0305(1).

(2) Child Care Division. The screener must notify the Child Care Division when a report involves a day care facility, as required by ORS 418.747(2)(e) and 419B.020(1). If the report is closed at screening, a copy of the report must be sent to the Child Care Division after information related to the reporter's identity and other confidential information is removed.

(3) Child Caring Agency Licensing Program. The screener must notify the Department's Child Caring Agency Licensing Program when a report involves a licensed child caring facility (see OAR 413-200-0000).

(4) Senior and People with Disabilities Division (SPD). The screener must notify the Office of Investigations and Training with the Public Health Division of the Department when a report involves a child with developmental disabilities in an SPD licensed group home.

(5) ICWA. If the screener knows or has reason to know that the child is an Indian child, the screener must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted.

Stat. Auth.: ORS 418.005 & 419B.017

Stats. Implemented: ORS 418.005, 419B.015 & 419B.017

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0220

Screening Extensions

(1) Except as provided in section (2) of this rule, the CPS supervisor may grant an extension to the deadline in OAR 413-015-0205 if the screener is unable to complete all required screening activities the same day that the report alleging child abuse or neglect is received because critical information, such as the child's location, is still needed to determine the Department response. The screener must document in GAP the reason for the extension, including the critical information that remains to be collected, and the CPS supervisor's approval.

(a) The CPS supervisor may grant a one-business day extension up to two times; and

(b) Screening activities may not exceed two business days beyond the day the report alleging child abuse or neglect is received by Child Welfare.

(2) If the screener has the critical information needed to determine the Department response or has information that indicates the child is unsafe, no extension to the deadline in OAR 413-015-0205 may be allowed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

ADMINISTRATIVE RULES

413-015-0405

CPS Assessment Response Time Lines

(1) The time line for the Department response refers to the amount of time from the receipt of a report at screening to the time when the CPS worker is required to make an initial contact.

(2) Except as provided in sections (3) and (4) of this rule, every CPS assessment must be assigned one of the following response time lines and the CPS worker must make an initial contact within the assigned response time line:

(a) Within 24 hours.

(b) Within five calendar days.

(3) A supervisor may change the initial contact time lines established in section (2) of this rule as follows:

(a) The supervisor may change the response time line from within five calendar days to within 24 hours.

(b) The supervisor may change the response timeline from within 24 hours to within five calendar days, but the supervisor must explain in writing why the time line was changed and how the child's safety needs were considered when the change was approved.

(4) If a screener was granted an extension to complete the screening process, the CPS supervisor may adjust the initial contact time lines as follows:

(a) Within 24 hours: The CPS worker must make an initial contact within 24 hours of the end date of either the last screening extension or the date the CPS assessment was assigned, whichever is earlier.

(b) Within five calendar days: The CPS worker must make an initial contact within five calendar days of the end date of either the last screening extension or the date the CPS assessment was assigned, whichever is earlier.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06; CWP 17-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 1-2006, f. & cert. ef. 2-1-06; Suspended by CWP 3-2006(Temp), f. & cert. ef. 2-1-06 thru 6-30-06; CWP 12-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0520

Purpose and Overview of the Day Care Facility Investigation

(1) OAR 413-015-0520 to 413-015-0565 describe the activities required to complete a child abuse or neglect investigation in a day care facility. A day care facility is:

(a) A registered family child care home, which is the residence of a provider, who has a current family child care registration at that address and who provides care in the family living quarters;

(b) A certified family child care home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time;

(c) A certified child care center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling; or

(d) A listed facility, which is a child care provider who is exempt from Child Care Division licensing and who receives subsidy payments for child care on behalf of the Department of Human Services' clients.

(2) Completing a Day Care Facility Investigation involves all of the following:

(a) Making initial contact within the assigned response time lines, which includes:

(A) Face-to-face contact with the alleged victim or victims;

(B) Contact with the parent or caregiver of the victim or victims; and

(C) Contact with other children as needed for child safety.

(b) Gathering safety-related information regarding the day care facility through interviews and observation.

(c) Determining if the parent or caregiver can and will protect the child and documenting the basis for that determination.

(d) Determining if there is reasonable cause to believe that child abuse or neglect occurred and documenting the basis for that determination.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0525

Contact and Work with Other Entities

The CPS worker may need to work with representatives of other entities to complete a day care facility investigation.

(1) Child Care Division. The CPS worker must notify and coordinate with the Child Care Division when a report involves a day care facility as required by OAR 418.747(2)(e) and 419B.020(1).

(2) Law Enforcement. If the screener did not cross report to appropriate law enforcement agencies, the CPS worker must contact one or more

law enforcement agencies in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to 413-015-0310. The Department and the law enforcement agency (LEA) shall jointly determine the roles and responsibilities of the Department and the LEA in their respective investigations. When there is a joint response involving CPS and law enforcement, the CPS worker is responsible for all of the activities necessary to complete the day care investigation. Whenever possible, the CPS worker must coordinate investigation activities with LEA.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0530

Day Care Facility Investigation Response Time Lines

The response time lines for investigations in day care facilities are the same as the response timelines for all CPS assessments. Those time lines are established in OAR 413-015-0405.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0535

Day Care Facility Investigation Activities

The required investigation activities are outlined below. The activities are described in a logical order in these rules (OAR 413-015-0520 to 413-015-0565), but the order in which they occur is controlled by the specific circumstances in a given case.

(1) **Review Records.** The assigned CPS worker must:

(a) Thoroughly review the documentation in the referral;

(b) Thoroughly review the paper and electronic records maintained by Child Welfare for historical information on the alleged child victim, the alleged perpetrator and their families, which must include a review for the following:

(A) History or a pattern of abuse or neglect by the alleged perpetrator, and

(B) History of abuse or neglect of the child victim or victims.

(c) When the CPS worker has information that the alleged perpetrator has lived in another state, make diligent efforts to contact the child welfare agency in the other states where the alleged perpetrator has lived and obtain records, if any, that may be relevant to the current investigation.

(2) **Contact Collateral Sources.**

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed. These collaterals may include:

(A) Doctors or others who have evaluated or maintain records on the alleged child victim in regard to the abuse or any effects of the abuse;

(B) Other people who may have information about the day care facility or the alleged perpetrator;

(C) Staff members, including past staff members, of the day care facility that may have information regarding the abuse or the alleged perpetrator;

(D) Other children that attend the day care facility and their parents that may have information about the day care facility or the alleged perpetrator.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with child welfare.

(3) **Consult with CPS Supervisor.** The CPS worker must consult with a CPS supervisor or designee:

(a) At the beginning of the investigation of a day care facility;

(b) At any time during the investigation when there is additional child victims identified;

(c) At any time during the investigation when information obtained indicates a licensing or a safety concern that requires an immediate protective action.

(d) A report of child abuse or neglect that is expected to receive media attention or that already is being reported by the media.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

ADMINISTRATIVE RULES

413-015-0540

Make Initial Contact

The CPS worker must make an initial contact within the assigned response time line with the alleged child victim's custodial parent or caregiver and the alleged child victim as follows:

- (1) As required by OAR 413-015-0420, notify the custodial parents or caregivers of the intent to interview an alleged child victim.
- (2) Have face-to-face contact with and interview the alleged child victim or victims. The purpose of the face-to-face contact and each interview is to gather information regarding possible child abuse, observe any signs of neglect or child injuries, determine if there are other alleged child victims, assess if the child or children are vulnerable to identified safety threats, and assess the immediate safety of the child or children.
- (3) Have face-to-face contact with and interview each custodial parent or caregiver of the alleged child victim or victims. The purpose of this face-to-face contact and interview is to find out what the parent or caregiver knows about the alleged child abuse or neglect and to gather information about their ability and willingness to protect.

Stat. Auth.: ORS 409.050 & 418.005,
Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050
Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0545

Other Contacts and Observations Required During the Investigation

The CPS worker must:

- (1) Interview the non-custodial parent of the alleged child victim during the investigation. This is not required during the initial contact but must be completed as part of the investigation.
- (2) Notify and interview the provider, owner or director of the day care facility. Except as provided below, the CPS worker must meet with the provider, owner or director of the day care at the beginning of the investigation to notify them of the allegations, arrange for access to the facility, plan interviews that will take place at the facility, and gain access to names of other children and their parents who may have been a witness or could be a collateral source for the investigation. The CPS worker is not required to meet with the provider, owner, or director of the facility if it could compromise a child's safety or a criminal investigation.
- (3) Interview staff of the day care facility that may have information regarding the alleged abuse or the alleged perpetrator.
- (4) Identify and select other children to be interviewed. Other children that attend the day care facility where the abuse allegedly occurred may need to be interviewed. They are children who:
 - (a) Witnessed the alleged abuse or neglect;
 - (b) Have information pertinent to the investigation about the day care facility; or
 - (c) Have information pertinent to the investigation about the alleged perpetrator.
- (5) Notify and interview the parent or caregiver of any children who are selected to be interviewed during the investigation. The intent of the interview is to gain permission to interview their child and to learn of any information they may have about the alleged perpetrator and the alleged incident. Interviews with children that are not alleged victims must not occur prior to receiving permission by a parent or caregiver. If the CPS worker is denied permission to interview children who are not alleged victims, but such interviews are needed to complete the investigation, the CPS worker should consult with their supervisor and seek the assistance of a district attorney or assistant attorney general.
- (6) Interview the selected children. The purpose of the interview is to gain information about the alleged abuse and the alleged perpetrator and assess the child's safety at the day care facility.
- (7) Interview the alleged perpetrator. The purpose of the interview is to notify the alleged perpetrator of the allegations, allow them to respond to the allegations, determine if the alleged perpetrator poses a threat to other children, and notify them of the steps needed to complete the investigation. When interviewing the alleged perpetrator, the CPS worker must:
 - (a) Coordinate the interviews of the alleged perpetrator with the law enforcement agency (LEA) when law enforcement is conducting an investigation;
 - (b) Consult with a CPS supervisor if an interview with the alleged perpetrator could make a child or adult unsafe; and
 - (c) Provide the alleged perpetrator with a written notice that a criminal records check may be or has been conducted on them.
- (8) Observation of the day care facility. The purpose of observing the day care facility is to gather information about the alleged incident and to assess the overall safety of the setting.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050
Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0550

Determining If the Parent or Caregiver Can or Cannot and Will or Will Not Protect

The CPS worker must comply with OAR 413-015-0430 in determining if the parent or caregiver can or cannot and will or will not protect a child.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050
Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0555

Determine Disposition of the CPS Assessment

The CPS worker must comply with OAR 413-015-0440 to determine the disposition of the CPS assessment.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050
Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0560

Notification of Disposition

In addition to requirements of OAR 413-015-0470, the CPS worker must notify:

- (1) Child Care Division. A copy of the investigation must be sent to the Child Care Division after information relating to the reporter's identity and other confidential information is removed. Any recommendations regarding the day care facility may also be included.
- (2) Owner or director of the day care facility. When there is no owner or director the notification is to the provider. If the owner, director, or provider is not the alleged perpetrator, parent or caregiver, the notification will include whether the Department determined that child abuse or neglect occurred and information necessary to protect children from abuse and neglect in the facility in the future.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050
Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-0565

Documentation and Supervisory Review Requirements

The CPS worker must:

- (1) Refer to and comply with OAR 413-015-0475, "CPS Assessment Documentation and Supervisory Review Requirements"; and
- (2) Complete the Out of Home Care Assessment and Investigation report.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050
Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

413-015-1000

The CPS Assessment Dispositions

- (1) This rule describes child abuse and neglect for the purpose of making CPS assessment dispositions.
- (2) As part of completing the CPS assessment, the CPS worker must determine whether there is reasonable cause to believe child abuse or neglect occurred. The possible determinations are:
 - (a) "Founded," which means there is reasonable cause to believe that child abuse or neglect occurred.
 - (b) "Unfounded," which means no evidence of child abuse or neglect was identified or disclosed.
 - (c) "Unable to determine," which means there are some indications of child abuse or neglect, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse or neglect occurred. The "unable to determine" disposition may be used only in the following circumstances:
 - (A) After extensive efforts have been made, the CPS worker is unable to locate the family; or
 - (B) After completing an assessment that complies with the Department's rules:
 - (i) The child is unable or unwilling to provide consistent information and there is insufficient information to support a founded or unfounded determination; or
 - (ii) There is conflicting or inconsistent information from collateral contacts or family, and there is insufficient information to support a founded or unfounded determination.
 - (d) When a CPS worker is assigned a CPS assessment the CPS supervisor may determine that no face-to-face contact is necessary with the alleged child victim and the alleged perpetrator of abuse only in the following circumstances:
 - (A) The assessment was opened in error. This is a determination that the referral is mistakenly opened.

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(B) The reported information is addressed in another open CPS assessment. This is a determination that the report content is being included in another, currently open CPS assessment, under the same case number.

(C) The allegation was cleared through collateral contact. This is a determination that the CPS worker has, through collateral contacts, received information that indicates there is no longer a report of child abuse or neglect, as defined in 419B.005.

(3) When determining whether there is reasonable cause to believe child abuse or neglect occurred, the CPS worker shall consider, among others, the following parent or caregiver behavior, conditions, and circumstances:

(a) Abandonment, including parental behavior showing an intent to permanently give up all rights and claims to the child.

(b) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(c) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the parent or caregiver that has a direct effect on the child. The parent or caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional, or social well-being and functioning.

(d) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Chronic neglect is a persistent pattern of family functioning in which the parent or caregiver does not sustain or meet the basic needs of a child resulting in an accumulation of harm that can have long term effect on the child's overall physical, mental, or emotional development. Neglect includes each of the following:

(A) Physical neglect, which includes each of the following:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety. When the CPS worker is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide the child with immunizations or routine well-child care alone does not constitute medical neglect. When the CPS worker is making a determination of medical neglect, this determination must be consistent with medical findings.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the parent or caregiver leaving the child with another person and failing to reclaim the child, or parent or caregiver failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The parent or caregiver behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(e) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include:

(A) Head injuries

(B) Bruises, cuts, lacerations

(C) Internal injuries

(D) Burns or scalds

(E) Injuries to bone, muscle, cartilage, and ligaments

(F) Poisoning

(G) Electrical shock

(H) Death

(f) Sexual abuse, which includes a person's use or attempted use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(g) Sexual exploitation, including the use of a child in a sexually explicit way for personal gain, for example, to make money, in exchange for food stamps or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(h) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other child abuse or neglect.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 6-2005, f. & cert. ef. 4-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08

Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 8-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08

Notice Publication Date: 5-1-2008

Rules Amended: 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0640

Subject: OAR 413-070-0600, 413-070-0620, 413-070-0625, and 413-070-0640 are about the requirements for assessing the child's needs when the Department places the child in substitute care to assure the child's safety. These rules are being amended to implement SB 414 (2007) by incorporating the Department's responsibility to make diligent efforts to place siblings together when substitute care is required to manage child safety. These rules are also being amended to make permanent temporary rule changes from January 1, 2008. These rules are also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0600

Purpose

The purpose of these rules (OAR 413-070-0600 to 413-070-0645) is:

(1) To describe the requirements for assessing the child's needs when the Department places the child in substitute care to assure the child's safety;

(2) To identify the most appropriate, available substitute care provider who can meet the child or young adult's needs; and

(3) To describe the requirements for assessing the substitute care placement in meeting the child or young adult's need for safety, permanency, and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0620

Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:

(1) "Caregiver relationship" means a relationship between a person and a child — that has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age — and the person had physical custody of the child or resided in the same household as the child; the person provided the child on a daily basis with the love, nurturing and other necessities required to meet the child's psychological and physical needs; and the child depended on the relationship to meet the child's needs. "Caregiver relationship" does not include a relationship between a child and a person who is an unrelated foster parent of the child unless the relationship continued for a period of at least six consecutive months.

(2) "Child" means a person under 18 years of age.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "FACIS" means the Family and Child Information System.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(6) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally

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associated with parenthood, unless a court finds that the putative father is not the legal father.

(7) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(8) "Relative Caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(9) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent; or

(b) Through the marriage of the children's or young adults' legal or biological parents.

(10) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(11) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(12) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

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

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0625

Identifying and Assessing the Child or Young Adult's Needs when Placement in Substitute Care is Required

(1) To determine a child or young adult's immediate needs when substitute care is required to manage safety, the caseworker must:

(a) Involve the child or young adult's parent or legal guardian in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child or young adult.

(c) Consider potential substitute care placements that meet the safety and well being needs of the child or young adult in the following order of preference:

(A) A relative of the child or young adult who can be certified by the Department;

(B) A person who has a caregiver relationship with the child or young adult and can be certified by the Department;

(C) An unrelated person to whom the child or young adult has significant attachment or who has significant attachment to the child or young adult, and can be certified by the Department; or

(D) A foster parent who is certified by the Department, or a provider who is certified through a licensed child-caring agency.

(d) If a child or young adult is placed in substitute care and has a sibling who is currently in or also needs substitute care, make diligent efforts to place siblings together.

(e) Identify which person has the closest existing personal relationship with the child or young adult if more than one person requests to have the child placed with them.

(f) Consider whether the substitute care placement:

(A) Has the ability to provide safety for the child or young adult and the siblings when consideration is being given to placing siblings together;

(B) Is willing to cooperate with any restrictions placed on contact between the child or young adult, and others;

(C) Has the ability to prevent anyone from influencing the child or young adult in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child or young adult; and

(E) Has the ability to meet the child or young adult's physical, emotional, and educational needs, including the child or young adult's need to continue in the same school or educational placement.

(g) Assure that the substitute care placement is the most home-like, least restrictive available to meet the child or young adult's needs.

(h) Assure that the race, color, or national origin of the child, young adult, or substitute care placement is not a consideration when assessing a substitute care placement.

(i) If the child is an Indian or Refugee child, follow OAR 413-070-0220 and 413-070-0320 regarding placement preferences.

(2) Within 30 days of the child's placement in substitute care, the caseworker must reconsider whether the substitute caregiver is able to meet the considerations in subsection (1)(f) of this rule and assess whether the substitute caregiver meets the following placement preferences:

(a) Is in close proximity to the child's parents or legal guardians;

(b) Is in close proximity to the child's community;

(c) Can keep siblings together; and

(d) Can support the child's culture and family identity.

(3) When the substitute care placement does not meet one or more of the placement considerations in subsection (1)(f) or section (2) of this rule, the caseworker must determine whether remaining in the substitute care placement is in the best interests of the child.

(a) If the caseworker determines that remaining in the current substitute care placement is in the best interests of the child, the child should remain in the placement.

(b) If the caseworker determines that remaining in the current substitute care placement is not in the best interests of the child, the caseworker must work with Department staff to secure another substitute care placement for the child.

(4) The caseworker must document the section (3) determination in FACIS and explain the basis for the determination as it relates to the best interests of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0640

Review of the Substitute Care Placement During Case Plan Review

(1) When the child or young adult is in substitute care at the time of each 90 day case plan review, the caseworker must include in the review written documentation of the extent to which the child or young adult's substitute care placement meets the child or young adult's ongoing need for safety, permanency, and well-being.

(a) To determine the extent to which the placement meets the child or young adult's needs for physical and emotional safety, the caseworker must determine whether the following conditions exist in the home:

(A) The substitute caregiver has the skill level or willingness to acquire the skills necessary to meet the physical, emotional and supervisory needs for each child or young adult in the placement;

(B) The substitute caregiver has the skill level to care for the age, number, and gender of the children or young adults currently in the placement;

(C) The behavioral characteristics of children or young adults currently in the placement are such that the child or young adult will be protected from further victimization and from harming self or others;

(D) The substitute caregiver has the ability to protect the child or young adult from inappropriate contact with those who may harm the child or young adult; and

(E) The physical layout of the home permits the substitute caregiver to safely supervise the children or young adults in the home.

(b) To determine the extent to which the placement meets the need of the child or young adult to preserve existing attachment to the family, the caseworker must consider whether:

(A) The family has expressed a preference in placement;

(B) The child or young adult has requested a particular placement;

(C) The relative caregiver, foster parent, or provider has demonstrated the ability:

(i) To support the attachment of the child or young adult through visitation and other types of contact with the child's family;

(ii) To accommodate the placement of siblings in the substitute caregiver's home;

(iii) To accommodate regular contact between siblings when siblings cannot be placed together and regular contact is in the best interests of the child or young adult; and

(iv) To provide mutual care when both the child and parent require placement. As used in this rule, "mutual care" means the out-of-home placement of a parent and child together where one or both are in the legal custody of the Department.

(c) To determine the extent that the placement meets the need of the child or young adult for continuity and familiarity, the caseworker must consider:

(A) The extent of the child or young adult's pre-existing relationship with the relative caregiver, foster parent, or provider;

(B) The placement is appropriate to meet the permanency and well-being needs of the child because of its proximity to the child or young adult's neighborhood, school or educational placement, and parent or legal guardian; and

(C) Whether the relative caregiver, foster parent, or provider can provide a permanent home or facilitate transition to a permanent home for the child or young adult.

(d) To determine the extent that a particular placement meets the need of the child or young adult for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider demonstrates competency in meeting the child or young adult's specific and unique needs or is acquiring the skills necessary to meet the child or young adult's specific and unique needs;

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(B) Whether the ability of the relative caregiver, foster parent, or provider to meet the child or young adult's specific and unique needs is influenced by the number and type of children in the placement; and

(C) Whether the ability and willingness of the relative caregiver, foster parent, or provider to assist, participate in, and act as an advocate for the child or young adult in his or her education and treatment plan is sufficient to meet the needs of the child or young adult.

(e) To determine the extent to which the placement meets the need of the child or young adult for stability, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has expressed a desire to provide permanency for a particular child or young adult;

(B) Whether the ability of the relative caregiver, foster parent, or provider to provide support and to nurture the child or young adult is influenced by the number of children or young adults in placement;

(C) Whether the relative caregiver, foster parent, or provider is willing to provide care for the child or young adult as long as needed;

(D) Whether the capacity of the relative caregiver, foster parent, or provider to recognize the child or young adult's needs and build on the child or young adult's strengths is sufficient to meet the long-term placement needs of the child or young adult.

(f) To determine whether the placement can support the child or young adult's identity, development, and cultural and religious background, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has the ability to appreciate, nurture, support, and reinforce the identity and cultural and religious background of the child or young adult;

(B) Whether the relative caregiver, foster parent, or provider has the ability to support the development of the individual child or young adult, and help the individual child or young adult with problems that the child or young adult may encounter. (Refer to Child Welfare Policies I-E.2, "Multiethnic Placements", OAR 413-070-0000 to 413-070-0033 and I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260);

(C) Whether the relative caregiver, foster parent, or provider has the ability to communicate effectively with the child or young adult; and

(D) Whether the child or young adult has adjusted to the placement.

(2) The caseworker must document the extent to which the child or young adult's relative caregiver, foster parent, or provider meets the child or young adult's need for safety and well-being:

(a) In FACIS case notes at the 90-day case plan review; or

(b) In the case plan (0333a), Child Description, Their Needs and Well Being section, at the six-month case plan review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 9-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08

Notice Publication Date: 5-1-2008

Rules Amended: 413-070-0800, 413-070-0810, 413-070-0830, 413-070-0855, 413-070-0860, 413-070-0870, 413-070-0880

Subject: OAR 413-070-0800, 413-070-0810, 413-070-0830, 413-070-0855, 413-070-0860, 413-070-0870, and 413-070-0880 about the Department's responsibilities in arranging frequent contact between a child or young adult and his or her parents, legal guardians and siblings are being amended to make permanent temporary rules amended January 1, 2008. These rules are also being amended to incorporate the Department's responsibility to document and track a child's and young adult's visits with his or her parents and siblings when the child is in substitute care. These rules are also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0800

Purpose

The purpose of these rules (OAR 413-070-0800 to 413-070-0880) is to describe the Department's responsibilities in arranging frequent contact between the child or young adult in substitute care, the child or young adult's parents or legal guardians, siblings, and other people with whom the child or young adult has a significant connection. In all cases, the contact is intended to:

(1) Be in the best interest of the child or young adult, develop or enhance attachment with the child or young adult's family, including sib-

lings, and continue the child or young adult's relationships with significant others, including siblings;

(2) Reduce the trauma to the child or young adult associated with separation from primary attachment figures; and

(3) Assure that the safety and well-being of the child or young adult are the paramount concerns in developing a child-family contact plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0810

Definitions

The following definitions apply to OAR 413-070-0800 to 413-070-0880:

(1) "Child" means a person under 18 years of age.

(2) "Child-family contact" means communication between the child or young adult and family and includes but is not limited to visitation with the child or young adult, participation in the child or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "FACIS" means the Family and Child Information System.

(5) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes a child 12 years of age or older and a child younger than 12 years of age, when appropriate. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated child or young adult placed in the home by the Department.

(7) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(8) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(9) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(10) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent; or

(b) Through the marriage of the children's or young adults' legal or biological parents.

(11) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(12) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(13) "Supervised visit" means a child-family contact that includes a designated third party to protect the emotional and physical safety of a child or young adult.

(14) "Visit" means planned, in-person contact between the child or young adult and one or more family members.

(15) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.337 & 419B.440

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0830

The Right to Visit

Subject to the limitation of section (4) of this rule:

(1) The child or young adult, a parent or legal guardian, and each sibling have the right to visit each other while the child or young adult is in substitute care. The child or young adult, the parent or legal guardian, and

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each sibling have a right to visit as often as reasonably necessary to develop and enhance their attachment to each other.

(2) The Department will prohibit or cancel visits when:

(a) There is reason to believe a parent or legal guardian's acts or omissions would result in child abuse or neglect during the visit;

(b) The child or young adult's safety cannot be managed by supervision;

(c) The visit does not meet the best interests of the child; or

(d) A court order prohibits visits.

(3) When Department resources alone cannot meet the family contact and visitation needs of the child or young adult, the caseworker must solicit help from family and community resources.

(4) If a parent or legal guardian objects to the contact and visit requirements and limitations that the Department imposes, the parent or legal guardian may seek the juvenile court's review of the requirements and limitations.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0855

Determining Priority in Visit and Contact Plans

(1) Unless the court has entered an order regarding visitation by the child or young adult's parents, legal guardians or siblings, the caseworker determines a hierarchy of the child or young adult's attachments and prioritizes visits with the child or young adult's parents or legal guardians, and siblings. The caseworker may consider the preferences expressed by the child or young adult.

(2) When the permanency plan is reunification with a parent or legal guardian, the first priority of the caseworker will be to provide visits with parents or legal guardians, siblings, and each intervenor granted visitation by the court.

(3) When the permanency plan is a plan other than return to the parents or legal guardians, the visitation priority of the caseworker shall be to both preserve the child or young adult's attachment to parents or legal guardians and siblings and promote the child or young adult's attachment to the permanent placement resource.

(4) When appropriate, the caseworker may consider establishing visits with the child or young adult's family members.

(5) When appropriate, the caseworker may consider establishing visits with the child or young adult and non-related persons with whom the child or young adult has a significant attachment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0860

Types of Visit and Contact Plans

(1) The Temporary Visit and Contact Plan.

(a) The caseworker must jointly develop a written Temporary Visit and Contact Plan (CF 0831A) with the parents or legal guardians, and may involve the child, family members, safety service providers and the substitute caregiver to participate in facilitating visitation and supporting the ongoing safety plan when the child first enters substitute care or at the time of the first court hearing required by ORS 419B.183, whichever is first. The visits must be planned to manage child safety.

(b) The court may make an order regarding visitation between the child or young adult's parents or siblings.

(c) The caseworker must arrange a Temporary Visit and Contact Plan (CF 0831A) that assures child safety.

(d) The plan must include the following:

(A) The names of each person, including the child's siblings, with whom the child may have contact; and

(B) A description of the contact permitted with each person that includes:

(i) The type, time of day, frequency, length, and location of the visits; and

(ii) The reason for supervised visits when supervision is required.

(e) If the first visit does not occur within the first week of a child's placement in substitute care, the caseworker must document the reason the visit did not occur in FACIS case notes.

(f) The caseworker must provide a copy of the Temporary Visit and Contact Plan to the parents or legal guardians and to others participating in the Temporary Visit and Contact Plan.

(2) The Ongoing Visit and Contact Plan.

(a) The caseworker must develop an Ongoing Visit and Contact Plan (CF 0831B) with the parents or legal guardians within 30 days from the date that the child enters substitute care. The caseworker may involve the child, family members, safety service or treatment providers, and the substitute caregiver to participate in facilitating visitation in the development

of the visit and contact plan. A copy of the written plan is given to each participant. The visits must be in the least restrictive manner in which the child or young adult's safety can be managed.

(b) The caseworker must arrange an Ongoing Visit and Contact Plan that supports child safety, the ongoing safety plan, the best interests of the child, and any orders of the court regarding visitation with a child or young adult's parents or siblings.

(c) When an Ongoing Visit and Contact Plan is revised, the caseworker completes a revised Ongoing Visit and Contact Plan and provides a copy of the revised plan to each participant.

(d) A plan that prohibits a parent, legal guardian, or sibling's visit must include the reason for each prohibition and state, if applicable, the conditions under which the Department would begin or resume contact.

(e) The caseworker must document the implementation of the Ongoing Visit and Contact Plan in the case plan.

(f) The caseworker must develop the written Ongoing Visit and Contact Plan which must:

(A) Include the purpose and conditions of visits and contacts including type, time of day, frequency, length, and location;

(B) Describe the reason for supervision when supervision is required;

(C) Identify the individual who will supervise the visit or assist a parent or legal guardian in meeting the needs of the child or young adult during visitation;

(D) Support the ongoing safety plan; and

(E) Use language that parents or legal guardians can understand.

(g) In developing an Ongoing Visit and Contact Plan, the caseworker must:

(A) Arrange visits so that the type, time of day, frequency, length, and location of visits maximize contact between the parents or legal guardians and the child or young adult, support the ongoing safety plan and support the child or young adult's permanency plan as described in OAR 413-070-0855(2) and (3);

(B) Meet the unique needs of the child or young adult, especially the child or young adult's chronological or developmental age and sense of time as they affect the child or young adult's attachment to a parent or legal guardian and other family members;

(C) Arrange visits that do not disrupt the school schedule of the child or young adult whenever possible;

(D) Arrange additional contact such as telephone calls, e-mail, and letters, and other activities the family and child or young adult may do together that support the ongoing safety plan, such as attendance by parents or legal guardians at doctor appointments, school events, and church;

(E) Address barriers to visitation that must be overcome in order for the parent, legal guardian, child or young adult to participate in the visits, including transportation, adaptations for those traveling long distances, health care requirements, and arranging child care for a child's sibling;

(F) Work within each parent's or legal guardian's employment and treatment obligations;

(G) Ensure that the Ongoing Visit and Contact Plan considers the safety needs of any non-offending parent or legal guardian in cases involving domestic violence, including but not limited to different visiting schedules or arranging safe drop-off and pick-up locations;

(H) Explain to a parent or legal guardian the consequences of failure to attend a visit;

(I) Explain known or anticipated reasons for ending the visit (such as health or safety);

(J) Take the actions necessary to assure culturally relevant and language appropriate visitation services; and

(K) Discuss alternatives when visits are canceled due to circumstances of the parent or legal guardian, substitute caregiver, or the Department.

(3) The Ongoing Visit and Contact Plan may be reviewed or revised at any time and must be reviewed every 90 days.

(4) An Ongoing Visit and Contact Plan must comply with the Interstate Compact on the Placement of Children.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.337, 419B.440 & 419B.449

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0870

Supervision of Visits

(1) If supervision of visits is necessary to protect the child from harm, manage child safety, or provide therapeutic intervention, the Ongoing Visit and Contact Plan must state the reason for the supervision.

(2) When delegating supervision to a person who is not an employee of the Department, the Department will ensure that the person supervising the visit receives a copy of the Ongoing Visit and Contact Plan, understands the dynamics of the individual family, the purpose of supervision, the specific circumstances that require the supervision, the documentation requirements, and complies with the ongoing safety plan.

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(3) When delegating supervision to other Department staff, the Department will ensure the Department employee who participates in the Ongoing Visit and Contact Plan receives a copy of the Ongoing Visit and Contact plan, understands the dynamics of the individual family, the purpose of supervision, the specific circumstances that require the supervision, and the documentation requirements of OAR 413-070-0880.

(4) The caseworker must inform the parents or legal guardians of the reason for the supervision of the visits or contact, and, as resources allow, all supervision should be culturally relevant and language appropriate.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08

413-070-0880

Documentation of Contact

(1) When Department staff supervise a visit, documentation of the visit must be included in the case file and must document:

- (a) The location of the visit, who attended, and the length of the visit;
- (b) Activities that occurred during the supervised visit;
- (c) The impact of the visit on the child or young adult;
- (d) Any missed visit and the reasons for the missed visit; and
- (e) Any interrupted or terminated visits and reasons for the interruption or termination.

(2) When the caseworker arranges supervision by a person other than Department staff, the caseworker must require that the person supervising the visit provides complete written documentation of the visit, as required by section (1) of this rule, to the caseworker within seven days of each visit.

(3) For Visits Occurring On or After January 1, 2008. When the child or young adult is in the legal custody or guardianship of the Department, the caseworker must report to the court no less frequently than every six months, the place and date of the child's or young adult's visits with his or her parents or siblings since the child or young adult has been in the guardianship or legal custody of the Department, and whether the frequency is in the best interest of the child or young adult. Reports must be filed with the court more frequently if the court so orders.

(4) When other types of contact in addition to face-to-face visits are included in the Ongoing Visit and Contact Plan, the caseworker must request regular feedback from the participants regarding the impact of the contact on the child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.337, 419B.440 & 419B.449

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 10-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08

Notice Publication Date: 5-1-2008

Rules Amended: 413-090-0010

Subject: OAR 413-090-0010 is being amended to implement the provisions of SB 282 (2007 Or. Laws ch. 801) by adding relative caregivers to the group of people who may receive a foster care reimbursement, make permanent a temporary rule amended January 1, 2008, and implement a cost of living increase to family foster care and relative care rates that the legislature approved. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

Rules Coordinator: Annette Tesch — (503) 945-6067

413-090-0010

Payments — General Guidelines

(1) Family Foster Care

(a) Payment by the Department — to foster parents or relative caregivers — for a child or young adult's room, food, clothing, incidentals, and cash allowance (known as the regular foster care rate) is made on a monthly basis, or prorated for portions of a month, after the month in which the care has been provided. It includes the day the child or young adult enters the home, but excludes the day the child or young adult leaves the home. Costs of special care or service may also be provided if essential for the child or young adult's well being and if specifically authorized by Child Welfare. See Child Welfare Policy I-E.5.1.2, "Special Rates/Personal Care" OAR 413-090-0100 to 413-090-0220.

(b) Regular foster care rates are based upon the age of the child or young adult and the type of program services they are receiving; Family Foster Care, Relative Care, Family Shelter Care, or Family Group Home. The rate structure is established by the Department, subject to the avail-

ability of funds, and is uniform throughout the state. The current monthly reimbursed regular rates effective July 1, 2007 are:

(A) Monthly Family Foster Care and Relative Care Rates

(i) Age of Child or Young Adult — 0-5 — 6-12 — 13-21

(ii) Room/Board/Other — \$346 — \$343 — \$410

(iii) Clothing Replacement — \$45 — \$51 — \$73

(iv) Personal Allowance — \$8 — \$20 — \$29

(v) Total — \$399 — \$414 — \$512

(B) Family Shelter Care — \$21.35 per day

(C) Foster Family Group Home — \$1,256 per month

(c) Payments to foster parents or relative caregivers certified by the Department shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

(2) Residential Treatment. Payment by the Department to purchase of care providers must be made as provided in signed contracts.

(3) Payments Prohibited.

(a) Payment may not be made for two simultaneous 24 hour out of home care services, such as foster care, relative care, family group homes, or residential treatment.

(b) Neither payment nor utilization credit may be given for simultaneous contracted treatment services, such as day treatment and residential treatment.

(c) Payment by the Department may not be authorized for the care of children or young adults in a home or facility supported by public funds and maintained only as a secure facility under the jurisdiction of a juvenile court.

(d) Any exceptions to these rules must be approved in writing by the director, or if for a Target Planning Child, by the CAF Target Planning and Consultation Committee. Exceptions will be considered only when federal funds will not be claimed.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.625 & 418.470

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 28-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 10-2008, f. 6-27-08, cert. ef. 6-28-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 11-2008(Temp)

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08 thru 12-24-08

Notice Publication Date:

Rules Amended: 413-100-0020

Subject: OAR 413-100-0020 about the definitions for terms used in rules about Title IV-E foster care eligibility determinations for children in substitute care is being amended to restate the definition of the term "foster home". This change is being made to comply with ORS 418.625(3) as amended by SB 282 (2007) which changed the definition of foster home to include relative caregivers. The Department is removing language that states a person related by blood or marriage may not receive a foster care reimbursement if the child they are caretaking for is not Title IV-E eligible.

Rules Coordinator: Annette Tesch — (503) 945-6067

413-100-0020

Definitions

The following definitions apply to OAR 413-100-0000 to 413-100-0320:

(1) "AFDC No-Adult Standard": The standard applicable to AFDC households that do not include an adult in the grant.

(2) "AFDC": The Aid to Families with Dependent Children Program as it existed on July 16, 1996, excluding changes implemented by the Oregon Options Waiver.

(3) "Amnesty Alien": Any person with proper INS documentation who, because of a well-founded fear of persecution due to race, religion, or political opinion, fled his or her homeland. The term "refugee" applies to all refugees and asylees with proper INS documentation, served by the Department under the Refugee Resettlement Program.

(4) "Assistance Unit": A group of individuals whose needs, income, and resources are considered together to determine their public assistance eligibility and the grant amount.

(5) "Certified Foster Home": For Title IV-E purposes under these rules (OAR 413-100-0000 to 413-100-0320), a foster home that the Department has certified and includes a relative foster home.

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(6) “Child Support”: Any voluntary or court-ordered contribution by an absent parent. Support includes, but is not limited to, money payments, education, and necessary and proper shelter, food, clothing, and medical attention.

(7) “Citizen or Alien Status”: The status of being a U.S. citizen or alien who is a qualified alien or unqualified alien, as defined by section 431 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended by The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and The Balanced Budget Act of 1997.

(8) “Constructive Removal”: The non-physical, paper, or legal removal of a child who is not living with a “specified relative” when the voluntary custody or voluntary placement agreement is signed or the judicial order is entered. Constructive removal is described further in OAR 413-100-0135(3)(b).

(9) “Countable Income”: The amount of available income, including earned and unearned income not specifically excluded by OAR 461-140-0040, used to determine eligibility for public assistance.

(10) “Court Order Date”: The date a court of competent jurisdiction issues a court order that gives the Department responsibility for the child’s placement and care.

(11) “Date a Child is Considered to have Entered Foster Care”: The earlier of the following:

(a) The date that the court found the child to be within the jurisdiction of the court under ORS 419B.100; or

(b) 60 days from the date of removal.

(12) “Department”: The Department of Human Services.

(13) “Earned Income”: All legal, reportable income resulting from an individual’s employment or self-employment.

(14) “Eligibility Month”:

(a) The month in which the court was petitioned or court action was initiated that resulted in the child’s “constructive” or “physical” removal from the home of his or her specified relative; or

(b) The month a voluntary custody or voluntary placement agreement is signed.

(15) “Entitlement”: Any benefit to which an individual has a valid claim, or would have a valid claim upon application, including one related to past employment or service, pension, compensation payment, allotment allowance insurance payment, interest in an estate or fund, or of a similar nature.

(16) “Family”: For purposes of determining Title IV-E Foster Care eligibility under these rules, the parent or parents, stepparent, or relative or relatives from whom the child is removed.

(17) “First cousin once-removed”: A child of a first cousin.

(18) “Foster Home”: As defined in ORS 418.625(3), means any home maintained by a person who has under the care of the person in such home any child under the age of 21 years unattended by the child’s parent or guardian, for the purpose of providing such child with care, food, and lodging, but does not include any foster home under the direct supervision of a private child-caring agency or institution certified by the Department, any home under the direct supervision of a custodial parent for the purpose of providing respite care, or any developmental disability child foster home.

(19) “Foster Care”: 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(20) “Incapacity”: A physical or mental defect, illness, or impairment that reduces substantially or eliminates the individual’s ability to support or care for the child and may be expected to last a period of at least 30 days.

(21) “Indian Child”: A child verified by a Tribal enrollment committee as enrolled or eligible for enrollment as a member of a federally recognized tribe.

(22) “Initiation of Court Action”: The date that the court was petitioned or legal action was taken that resulted in the removal of the child from the specified relative.

(23) “Minor Child”: Any person under the age of 18 who has not been emancipated by a court of law, married, or a member of the Armed Forces of the United States.

(24) “Need”: Using the Department AFDC standards, the monetary amount by which an individual or family’s requirements exceeds all of the income and resources available to the individual or family.

(25) “Non-Indian Child”: Any child not verified by a Tribal enrollment committee as enrolled or eligible for enrollment as a member of a federally recognized tribe.

(26) “Nunc Pro Tunc Orders”: Under Oregon law, a nunc pro tunc order is an order that restores to the record an action that actually occurred, but was inadvertently or mistakenly omitted from the record.

(27) “Parent”: Under the AFDC rules in effect on July 16, 1996, “parent” means the biological or legal (step or adoptive) mother or father of a person.

(a) If the mother lives with a male, who either she or he claims is the father of the child, and no one else claims to be the father, he shall be treated as the father even if paternity has not been legally established.

(b) The Voluntary Acknowledgment Form (HS 45-21) jointly signed by the mother and putative father, is a legal document that establishes paternity and allows the father’s name to be added to the birth certificate.

(c) A stepparent relationship exists if:

(A) The person is legally married to the child’s biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(d) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent, the adoptive parent, has given up care, control, and supervision of the child.

(28) “Payment Standard or Needs Standard”: The amount set by the Department as the AFDC net income limit. It is used to determine the actual grant amount. This amount refers to the “Payment or Need Standard” in effect on July 16, 1996.

(29) “Personal Property”: Everything that a person owns that is not real property, including liquid assets.

(30) “Physical Removal”: The removal of a child that occurs when a child is placed in substitute care, who was living with the “specified relative” when the voluntary custody or voluntary placement agreement was signed or court proceedings were initiated.

(31) “Real Property”: Land, buildings, and whatever is erected on or affixed to the land or buildings and taxed as real property.

(32) “Relieved of Temporary Commitment”: The court ends the Department’s responsibility for the child’s placement and care.

(33) “Removal Home”: The home from which the child was removed as a result of a judicial finding, voluntary custody agreement, or voluntary placement agreement. This term is further described at OAR 413-100-0135(3).

(34) “Resource”: Any personal or real property that is or can be made available to meet the need of the assistance unit the Department does not specifically exclude from consideration.

(35) “Shelter In-Kind”: Payment by an agency, other than the Department, or someone other than the client, for the client’s rent and utility bills at no cost to the client and the client provides no service in exchange for the payment.

(36) “Specified Relative”:

(a) A “parent” as defined in this rule;

(b) Any blood relative or half-blood relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great (persons with one common biological parent are half-blood relatives);

(c) A sibling, aunt, uncle, nephew, niece, first cousin, and first cousin once-removed;

(d) A person who legally adopts a child or the child’s parent, other legally adopted children of such persons, and any persons related to the child through the adoption who meet the degree of relationship specified in subsection (b) or (c) of this section;

(e) A stepmother, stepfather, stepbrother, or stepsister; or

(f) A spouse of anyone listed in subsections (b) to (e) of this section, even if the marriage is terminated by death or divorce.

(37) “Standards of Assistance”: The consolidated standards for payment specified in OAR 461-155-0030 that were in effect on July 16, 1996. These standards are used to determine income eligibility for AFDC.

(38) “Temporarily Unreimbursable”: The status of a child who would otherwise be Title IV-E eligible but for the child’s being temporarily placed out of a foster care setting.

(39) “Unearned Income”: All income that does not directly result from an individual’s employment or self-employment.

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

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010 & 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 11-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08

ADMINISTRATIVE RULES

Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 12-2008
Filed with Sec. of State: 6-27-2008
Certified to be Effective: 6-28-08
Notice Publication Date: 5-1-2008
Rules Repealed: 413-100-0040

Subject: OAR 413-100-0040 is being replaced to implement ORS 418.625(3) as amended by SB 282 (2007 Or. Laws ch. 801) which changed the definition of foster home to include relative caregivers. This change requires the Department to eliminate language that states a relative caregiver does not receive a foster care reimbursement if the child for whom they are providing substitute care is not Title IV-E eligible. This rule has been suspended since January 1, 2008.

Rules Coordinator: Annette Tesch—(503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 13-2008
Filed with Sec. of State: 6-27-2008
Certified to be Effective: 6-28-08
Notice Publication Date: 5-1-2008

Rules Adopted: 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930, 413-100-0935, 413-100-0940

Subject: OAR 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930, 413-100-0935, and 413-100-0940 are being adopted to make permanent temporary rules adopted January 1, 2008, and to describe the activities required to assure that regular education, special education, preschool, and post-secondary education services are provided to a child or young adult for whom the Child Welfare Program of the Department is legally responsible. These rules include policies about school placement, transportation, GED, Charter Schools, private school, international study, home schooling, consent for schooling, paying for education expenses, early education, and post-secondary education. These rules also need to be adopted to incorporate state legislative changes in the 2005 and 2007 sessions from HB 3075 (2005 Or. Laws ch. 521) and SB 414 (2007 Or. Laws ch. 806), and applicable federal law. These rules are being adopted to replace current Department Policy I-E.8, "Educational Services" which was not adopted through the rulemaking process.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0900

Purpose

The purpose of these rules, OAR 413-100-0900 to 413-100-0940, is to describe the activities required to:

(1) Ensure that regular education and special education services are provided to promote academic achievement of a child or young adult in the care and custody of the Department; and

(2) Ensure that public preschool education, early intervention education programs, and appropriate post-secondary education or training opportunities are explored for an eligible child or young adult in the care or custody of the Department.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0905

Definitions

The following definitions apply to OAR 413-100-0900 to 413-100-0940:

(1) "CASA" means Court Appointed Special Advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and is an advocate for the child pursuant to ORS 419A.170.

(2) "Department" means the Department of Human Services, Child Welfare.

(3) "GED" means a General Educational Development certificate issued pursuant to ORS 326.550.

(4) "Homeless individual" for the purposes of the McKinney-Vento Homeless Education Act means children and youth who have a right to public school enrollment and are awaiting foster care placement or are in temporary foster settings awaiting permanent placement under ORS 339.115(7).

(5) "IEP team" means the participants who determine whether the child is a child with a disability and who develop the individualized education program (IEP) for the child as described under ORS 581-015-2000(15) and 581-015-2210(1).

(6) "Parent", except as provided otherwise in OAR 413-100-0930, means the biological or adoptive mother or the biological, legal, or adoptive father of the child.

(7) "Special education," as defined in OAR 581-015-2000(33), means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction in the classroom, instruction in the home, and instruction in hospitals, institutions, special schools, and other settings. The term includes specially designed instruction in physical education, speech language services, vocational education, travel training, and orientation and mobility services.

(8) "Special education services" means assistance provided to a child with a disability to meet the child's unique needs and includes instruction in the classroom, in the home, and in hospitals, institutions, special schools, and other settings.

(9) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child who is in the legal or physical custody of the Department.

(10) "Surrogate" means a person who has been appointed to safeguard a child's rights in the special education decision-making process. The person may be appointed pursuant to OAR 581-015-2320 for school-age children, OAR 581-015-2760 for preschool children, or by the juvenile court under ORS 419B.220.

(11) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0910

Role of the Department in the Education of a Child or Young Adult

The Department promotes the academic achievement of a child or young adult by participating as a member of the team that performs the child or young adult's academic assessment, planning, and goal setting. The caseworker works collaboratively with the parent or legal guardian whenever appropriate; the local school district and school officials; the substitute caregiver; the surrogate, if one is appointed; the child or young adult's CASA and attorney; local Department of Education District Homeless Liaison; and service providers involved in the child or young adult's case plan, as appropriate, in order to ensure school enrollment and promote academic achievement.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0915

Ensure a Child or Young Adult's Enrollment in School or Educational Setting

(1) Preferred school or educational setting when a child first enters substitute care. The preferred school or educational setting when a child first enters substitute care is the school or educational setting the child attended prior to entry into substitute care whenever possible and when:

(a) Remaining in the same school or educational setting is in the best interest of the child; and

(b) Continuing to attend the same school or educational setting is consistent with the ongoing safety plan and does not jeopardize the child's safety.

(2) Consideration of continuity of previous school placement when a child enters substitute care or moves to another substitute care placement. A child who meets the definition of a homeless individual under the McKinney-Vento Homeless Education Act, may be referred to the local Department of Education District Homeless Liaison, and may qualify for services available through the Act.

(3) Responsibility for ensuring school enrollment. The caseworker must ensure a child or young adult in the Department's care or custody is enrolled in a school or educational setting, through eligibility established under ORS 339.115.

(4) Responsibility for school or educational setting placement decisions. When the juvenile court makes a finding that it is in the child's or young adult's best interest to continue to attend the school that the child or young adult attended prior to placement in substitute care by the Department, the child shall be a resident of the school district the child attended prior to placement and may continue to attend the school the child attended prior to placement through the highest grade level of the school, in accordance with ORS 339.133. Except when the court orders continued

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enrollment, when the Department has been given legal custody of a child or young adult:

(a) The team of individuals described in OAR 413-100-0910 makes the decision regarding placement when the child is not receiving special education services; or

(b) The child's or young adult's IEP team makes the decision regarding educational services and school placement when the child or young adult is receiving or eligible to receive special education services; or

(c) The young adult makes the decision regarding educational services and school placement when educational rights have been passed to the young adult; or

(d) When a child is in the care or custody of the Department under a Voluntary Placement Agreement, the parent or legal guardian retains legal authority over the child and is obligated to continue to exercise and perform all parental duties and legal responsibilities except those that the parent or legal guardian specifically delegates to the Department by the signed agreement.

(e) The caseworker must ensure the school or educational setting is consistent with the child's ongoing safety plan or is a safe setting for a young adult.

(5) Additional responsibilities when a private school, charter school, alternative school, or international study program is considered.

(a) Except as provided in subsection (4)(b) of this rule, when considering the enrollment of the child or young adult in a private school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;

(B) Verify that the school is accredited in the state where the school is located;

(C) Verify that an entity or person other than the Department will pay all costs except those approved under OAR 413-100-0935;

(D) Consider the religious affiliation of the child or young adult and the parent or legal guardian when considering enrollment in a religiously-affiliated private school;

(E) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(F) Obtain approval from the Child Welfare program manager.

(b) Except as provided in subsection (4)(b) of this rule, when considering the enrollment of a child or young adult in a charter school or alternative school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan;

(B) Verify that the charter school is approved by the local school district board or the Oregon Department of Education;

(C) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(D) Obtain approval from the Child Welfare program manager.

(c) Except as provided in subsection (4)(b) of this rule, when considering enrolling a child or young adult in an international study program, the caseworker must:

(A) Ensure that enrollment is consistent with the child's or young adult's permanency plan;

(B) Verify that the international study program is accredited;

(C) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver;

(D) Obtain approval from the Child Welfare program manager, the District Manager, the Foster Care Program Manager; and

(E) Obtain approval from the juvenile court.

(6) Additional responsibilities when considering a GED program. Except as provided in subsection (4)(b) of this rule, when considering a GED program for the child or young adult, whether the program is held at a public school or at a location other than a public school, the caseworker must:

(a) Determine, that obtaining a GED meets the child's or young adult's educational needs better than obtaining a high school diploma;

(b) Verify that a GED program is consistent with the child's or young adult's case plan;

(c) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(d) Obtain approval from the Child Welfare program manager.

(7) Additional responsibilities when considering home schooling. Except as provided in subsection (4)(b) of this rule, when considering home schooling for the child or young adult in the substitute caregiver's home, the caseworker must:

(a) Determine that a home schooling environment would not interfere with the child's or young adult's social development;

(b) Determine that home schooling would promote inclusion in the substitute caregiver's home;

(c) Determine that a home school environment is consistent with the child's or young adult's permanency plan;

(d) Determine that the child's or young adult's enrollment in a home school program is permitted by state law in another state if the child or young adult is placed in another state through the Interstate Compact on the Placement of Children;

(e) Obtain the approval of the child's or young adult's parent, as defined in OAR 413-100-0905(6), or guardian for the substitute caregiver to act as a private teacher;

(f) Verify the substitute caregiver has provided written notification to the education service district of intent to provide home schooling;

(g) Obtain the approval of a the Child Welfare program manager; and

(h) Obtain the approval of the juvenile court.

(8) Transportation to school. After the school or educational setting has been determined, the caseworker must assess the school district's available transportation options and, if school district transportation is unavailable, select and arrange the most reliable, safe, cost-effective transportation option to transport the child or young adult to and from the school or educational setting.

(9) Once a school or educational setting has been selected for a child or young adult, the caseworker must notify the school or educational setting that the child or young adult is in the legal custody of the Department and may provide information about the reason the child or young adult is in substitute care to the staff of the school or educational setting only when providing such information to a particular staff person is necessary for the child's or young adult's education planning or to ensure the safety of the child, young adult, or others in the school with whom the child or young adult has contact.

(10) The caseworker must document in the child's or young adult's case plan:

(a) Information about the current school or educational setting of the child or young adult;

(b) All schools or educational settings the child or young adult has attended since the date the child or young adult has been in the custody of the Department;

(c) The length of time the child or young adult has spent in each school or educational setting;

(d) The number of high school credits each child or young adult 14 years of age or older has earned;

(e) The child's surrogate, if one has been appointed;

(f) The reason for any change in the child's or young adult's school or educational setting; and

(g) Information regarding the child's or young adult's educational records, which may include but is not limited to report cards, transcripts, Individual Education Plan or 504 plan, and transition plan.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0920

Consent for School Activities

Once the Department has determined the child's or young adult's school or educational setting, the substitute caregiver may give permission for the child or young adult to attend school-related activities such as, but not limited to, school enrollment, field trips within the state of Oregon, routine social events, sporting events, and cultural events.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0925

Consent for Special Education Services

(1) When a child is in the care and custody of the Department, and there is reason to believe the child has a disability under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or the Oregon Department of Education administrative rules regarding special education (OAR 581, division 15), the caseworker must determine who is the parent or surrogate making educational decisions for the child.

(2) If a surrogate has not been appointed, or if more than one person is qualified to make special education decisions for the child, the caseworker may ask the court to determine the education decision maker. Persons who qualify to make educational decisions include:

(a) The biological or adoptive parent of the child.

(b) A foster parent or relative caregiver of the child.

(c) A legal guardian.

(d) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or a person who is legally responsible for the child's welfare.

(3) When a child with a disability is being considered for home schooling, in addition to the requirements of OAR 413-100-0915, the caseworker must:

(a) Ensure the child's surrogate has approved home schooling; and

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(b) Ensure the surrogate participates in the special education planning for the child in the home school environment.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0930

Rights to a Child's Education Records

(1) The Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, protects the authority of parents to review their minor children's education records, limit the records' release without written consent by the parents, and correct errors in those records. 34 CFR 99.3, one of FERPA's implementing regulations, defines "parent" as "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." Under this definition, a Department employee may act as a "parent," for FERPA purposes, if the Department is the legal guardian of the child.

(2) A Department employee may demonstrate his or her authority to exercise the FERPA rights of a child's parent by providing the educational agency or institution with evidence that the Department is the legal guardian of the child, which may include a juvenile court order appointing the Department as the legal guardian of the child.

(3) A child is eligible for special education services or is suspected of being eligible for special education services under the Individuals with Disabilities Education Act, 20 USC §§ 1400 et seq., or the Oregon Department of Education administrative rules regarding special education (OAR 581, division 015). A Department employee may:

(a) Receive information from the school of a child's personally identifiable information in connection with a CPS investigation under OAR 581-021-0380;

(b) Be advised by the school of a child's disabling conditions prior to an interview with the child during the course of a CPS assessment under ORS 419B.045;

(c) Seek a court order to obtain the special education records; or

(d) Seek a release of information to obtain the special education records from a child's or young adult's parent, guardian, surrogate, or from a young adult whose special education rights have been passed to the student.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0935

Educational Expenses

(1) The Department may authorize payment for some allowable school costs other than transportation, if sufficient funds are available and the school district does not cover the expense. Authorization for these expenses is outlined in Child Welfare Policies I-E.5.2, "Payments for Special or Extraordinary Needs", OAR 413-090-0365 and I-E.5.4, "Flexible Fund".

(2) A school district board or public charter school may waive school fees for certain activities under ORS 339.147 and 339.155 when the student is a ward of the court.

Stat. Auth.: ORS 339.147, 339.155, 409.050 & 418.005

Stat. Implemented: ORS 339.133, 339.147, 339.155, 409.050, 418.005, 419B.192 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

413-100-0940

Early Education and Post-Secondary Education

(1) The caseworker must ensure that an eligible child in the care or custody of the Department has the same access to public preschool education and early intervention education programs as eligible children not in the care or custody of the Department. In meeting this obligation, the caseworker must ensure a child victim under three years old has been referred to an early intervention education program.

(2) The caseworker must ensure that a child or young adult in the care or custody of the Department has access to the information and resources available to explore post-secondary education and training opportunities. In meeting this obligation the caseworker must include education in any child's or young adult's plan for transition to independent living.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220 & 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 13-2008, f. 6-27-08, cert. ef. 6-28-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 14-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08

Notice Publication Date: 5-1-2008

Rules Amended: 413-200-0210, 413-200-0220

Subject: OAR 413-200-0210 about family group homes serving children and young adults in Child Welfare custody is being amended to make permanent a temporary rule amended January 1, 2008, add cross-references to other rules and laws, and follow standard formatting. This amendment adds a reference to Child Welfare Policy II B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296.

OAR 413-200-0220 about requirements for family group homes is being amended to make permanent a temporary rule amended January 1, 2008 to correctly state the Department's policy about caregiver to child ratios in homes certified by the Department. This rule is being corrected to match the four-to-one caregiver to child ratio in OAR 413-200-0348. OAR 413-200-0220 is also being amended to correct the definition of one term to match its usage in the family group home rules. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-200-0210

Family Group Home — Statement of Purpose

(1) The family group home program was developed to meet the needs of children and young adults in Child Welfare custody who, because of emotional or behavioral characteristics, require a group living situation more structured than a foster home, but less structured than a group residential program. The purpose of family group home placement is to:

(a) Provide safety for the child or young adult in the least restrictive environment appropriate to meet the needs of the child or young adult;

(b) Improve the functioning of the child or young adult at home and in the community;

(c) Improve the relationship of the child or young adult with supportive adults; and

(d) Improve the ability of the child or young adult to successfully solve the problems of daily living.

(2) OAR 413-200-0210 and 413-200-0220 must be used in conjunction with Child Welfare Policies II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396 and II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296.

Stat. Auth.: ORS 418.005, 418.640

Stats. Implemented: ORS 418.005, 418.635

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 28-2000(Temp) f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 6-2001, f. & cert. ef. 3-23-01; CWP 9-2006(Temp), f. & cert. ef. 5-15-06 thru 11-9-06; CWP 21-2006, f. & cert. ef. 11-1-06; CWP 32-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 14-2008, f. 6-27-08, cert. ef. 6-28-08

413-200-0220

Family Group Home Requirements

(1) The following definitions apply to OAR 413-200-0210 and 413-200-0220:

(a) "Caseworker" means a Child Welfare employee assigned primary responsibility for a child or young adult served by Child Welfare.

(b) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing foster or relative care to children in the legal or voluntary custody of Child Welfare, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification standards.

(c) "Child" means a person under 18 years of age.

(d) "Department" means the Department of Human Services, Child Welfare.

(e) "Family group home liaison" means a Child Welfare employee, assigned by the local branch office, with primary responsibility for supporting referral, intake, and placement of children and young adults in the family group home.

(f) "Family group home provider" means the persons listed on the contract to provide Family Group Home services.

(g) "Individual service plan" means a goal-oriented, time limited written document which identifies the strengths and needs of the child or young adult, prioritizes desired behavior changes, and identifies appropriate services and supports to achieve the identified behavior changes.

(h) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of Child Welfare and lives in substitute care or lives independently, through the Child Welfare Independent Living Subsidy Program.

(2) A family group home provider must:

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(a) Meet all the safety standards defined in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396;

(b) Receive a "Certificate of Approval to Operate a Family Foster Home"; and

(c) Have the capacity to provide a safe and caring environment for a child or young adult whose emotional and behavioral characteristics are appropriate for family group home care.

(3) The family group home provider may contract for a minimum of four and a maximum of eight children and young adults. The total number of children and young adults living in the home, including the provider's children, may not exceed eight.

(4) The family group home provider may not provide emergency or shelter care for children or young adults.

(5) The family group home provider and the family group home liaison must jointly establish intake procedures for children and young adults being placed in the home. The intake procedure must include:

(a) Consultation between the caseworker, the family group home liaison, and the family group home provider to discuss the child or young adult being referred, and

(b) A pre-placement visit in the family group home by the child or young adult being referred.

(6) Individual service plans

(a) Within 30 days of placement, an individual service plan must be developed for each child or young adult. The child, the family group home liaison, the caseworker, and the family group home provider must be included in the development of the individual service plan. Other service providers may also be included.

(b) Individual service plans must be goal-oriented and time-limited. Each plan must consider the strengths and needs of the child or young adult, identify desired behavior changes, and estimate when the behavior changes will be achieved. The individual service plan must prioritize the behavior change goals, identify services and supports that will address each goal, and must include an after-care plan.

(c) For any child or young adult 16 years or older, the individual service plan must incorporate the Comprehensive Transition Plan (referred to as a youth's service plan in Child Welfare Policy I-B.2.3.5, "Independent Living Programs", OAR 413-030-0400 to 413-030-0455).

(7) The family group home provider must establish procedures for review of the individual service plan and after-care plan of the child or young adult. The after-care plan identifies the placement for the child or young adult after the child or young adult leaves the family group home.

(a) Each element of the individual service plan of the child or young adult is reviewed by the child or young adult, the family group home provider, the family group home liaison, and the caseworker every three months after the development of the plan. The individual service plan is revised or modified as necessary based on the progress of the child or young adult in meeting the behavior change goals.

(b) The after-care plan is reviewed by the child or young adult, the family group home provider, the family group home liaison, and the caseworker at the time of each individual service plan review, and the after-care plan is revised or modified as necessary based on the progress of the child or young adult in meeting the behavior change goals.

(8) Transitions.

(a) When a child or young adult has completed his or her individual service plan, the child or young adult is transitioned to the after-care resource in accordance with the individual service plan.

(b) If the child or young adult needs to be moved before the child or young adult has completed the individual service plan, the child or young adult, the family group home provider, the family group home liaison, and the caseworker of the child or young adult develop the transition plan for the move of the child or young adult. Whenever possible, the family group home provider provides 10 working days notice to the caseworker and the family group home liaison, requesting a child or young adult be moved from the home. Whenever possible, the caseworker provides 10 working days notice to the family group home provider and the family group home liaison when a child or young adult will be moved from the home.

(9) Staffing.

(a) A family group home must be staffed by the family group home provider.

(b) There must be a minimum of one adult to every four children and young adults who are present in the home.

(c) Any other adult, other than the family group home provider, that provides care and supervision of a child or young adult in the home must meet the alternative caregiver requirements of Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396.

(10) The family group home provider must plan for a minimum of 48 hours per month away from child care responsibilities. The family group home provider must prepare a written plan for respite care with the family group home liaison.

(11) Each family group home provider must participate in 30 hours of professional training each year. The certifier and the family group home provider jointly agree upon a written training plan.

Stat. Auth.: ORS 418.005, 418.640

Stats. Implemented: ORS 418.005, 418.635

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 28-2000(Temp) f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 6-2001, f. & cert. ef. 3-23-01; CWP 9-2006(Temp), f. & cert. ef. 5-15-06 thru 11-9-06; CWP 21-2006, f. & cert. ef. 11-1-06; CWP 32-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 14-2008, f. 6-27-08, cert. ef. 6-28-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 15-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-28-08

Notice Publication Date: 5-1-2008

Rules Adopted: 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, 413-200-0424

Subject: OAR 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, and 413-200-0424 are being adopted. These rules cover the responsibilities of screeners in Child Protective Services, the child's assigned caseworker, and certifiers in the Child Welfare program during the screening and assessment of a report of abuse or neglect in the home of a Department-approved certified foster parent or relative caregiver. These rules make permanent temporary rules adopted January 1, 2008 and to implement SB 412 (2007) which amended ORS 419B.015. These rules replace the Department's Child Welfare Policy I-B.2.2.3, "Assessment of Abuse Allegations in Family Foster Care, Family Group Homes and Family Shelter Homes", which was not adopted through the public rulemaking process.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-200-0404

Purpose

(1) The purpose of these rules (OAR 413-200-0404 to 413-200-0424) is to describe Department responsibilities during the screening and assessment of a report of child abuse or neglect involving the home of a Department certified foster parent or relative caregiver. A report involves the home of a Department-certified foster parent or relative caregiver if the report alleges that someone in the home abused or neglected any child.

(2) When a report is received involving the home of a Department-certified foster parent or relative caregiver, these rules, Child Welfare Policies I-AB.1 to I-AB.6, Child Protective Services (OAR 413-015-0100 to 413-015-1125), II-B.1, Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents (OAR 413-200-0301 to 413-200-0396), II-B.1.1, Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents (OAR 413-200-0270 to 413-200-0296), and I-B.1, Monitoring Child Safety (OAR 413-080-0040 to 413-080-0067) apply.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08

413-200-0409

Definitions

The following definitions apply to OAR 413-200-0404 to 413-200-0424:

(1) "Certification supervisor" means an employee of the Department, designated as a supervisor, supervising staff responsible for certification, training, and monitoring homes certified by the Department.

(2) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(3) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(4) "Child" means a person under 18 years of age.

(5) "Child protective services assessment (CPS assessment)" means activities and interventions that identify and analyze safety threats, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective actions or ongoing safety planning.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of the Department trained in child protective services and designated as a supervisor.

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(7) "Child protective services worker (CPS worker)" means an employee of the Department who has completed the mandatory Department training for child protective service workers.

(8) "Consulting foster parent or relative caregiver" means an individual who maintains or has held a Certificate of Approval to operate a foster or relative caregiver home, received Department approved training on the role of a consulting foster parent or relative caregiver, and agrees to serve in this role.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "Designee" means a person whom the designator directly and immediately supervises, or a person of equal or greater management responsibility than the designator.

(11) "FACIS" means the Family and Child Information System.

(12) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(13) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family. The certified family or the Department may initiate the inactive referral status.

(14) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; identifying safety threats; and determining if a protective action is needed.

(15) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(16) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(17) "Report" means an allegation of child abuse or neglect provided to Child Welfare that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(18) "Screener" means a Department employee with training required to provide screening services.

(19) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08

413-200-0414

Department Actions During Screening

(1) Screener Actions.

(a) When a screener receives information involving the home of a certified family, the screener must:

(A) Refer to and follow Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0200 to 413-015-0225 to gather and share information;

(B) Consult with the CPS supervisor before determining the Department's response;

(C) Notify the assigned caseworker of each child or young adult placed in the home, each assigned caseworker's supervisor, the assigned certifier, and the certifier's supervisor of all information received; and

(D) If the information is closed at screening as described in Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0210(4), document the information in FACIS provider case notes and notify the individuals listed in paragraph (C) of this subsection that the information was closed at screening.

(b) When a screener receives information alleging abuse or neglect of a young adult living in the home of a certified family, the screener must report the information to the young adult's caseworker; and

(A) Report the information to DHS, Seniors and People with Disabilities Division when the young adult is an individual with a diagnosed disability; or

(B) Report the information to law enforcement.

(2) Certifier Actions. When the assigned certifier is notified by a screener that information involving the home of a certified family was closed at screening, the certifier must examine the information received and follow Child Welfare Policy II-B.1.1., Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents (OAR 413-200-0270 to 413-200-0296).

(3) Assigned Caseworker Actions.

(a) When a report of information alleging abuse or neglect of a young adult has been shared with Seniors and People with Disabilities Division because the young adult is an individual with a diagnosed disability, the young adult's caseworker must coordinate the Department's response with the Seniors and People with Disabilities Division.

(b) When a report of information alleging abuse or neglect of a young adult has been shared with law enforcement, the young adult's caseworker must coordinate the Department's response with law enforcement.

(c) When a report is received alleging that a child or young adult in substitute care in the home of a certified family may have been subjected to abuse or neglect, and the screener determines that the report constitutes a report of child abuse or neglect as defined in ORS 419B.005, within three business days of the Department's receipt of the report, the caseworker of the child or young adult in substitute care who is the alleged victim must notify the following individuals that a report was received:

(A) The attorney for the child or young adult;

(B) The court appointed special advocate (CASA) for the child or young adult;

(C) The child or young adult's parents;

(D) Any attorney representing the child or young adult's parents; and

(E) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(d) The notification of the child or young adult's parents and any attorney representing the child or young adult's parents in paragraphs (3)(c)(C) and (D) of this rule is not required if the notification may interfere with an investigation or assessment or jeopardize the child or young adult's safety. The CPS supervisor, or the supervisor of a young adult's caseworker may authorize an exception to the requirement to provide notification based on documentation that supports this conclusion.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08

413-200-0419

Department Actions During the CPS Assessment

(1) CPS Worker and CPS Supervisor Actions.

(a) If the report involving the home of a certified family is referred for a CPS assessment, the assigned CPS worker must convene a staffing before making initial contact unless the timing of the staffing will compromise child safety. The purpose of the staffing is:

(A) To determine and coordinate the response to the referral;

(B) To notify the certifier assigned to the home, the caseworkers assigned to each child or young adult placed in the home, and their respective supervisors of the referral; and

(C) To share information known by the Department regarding the children or young adults placed in the home and the certified family.

(b) The CPS worker must ensure that the following people are invited to the staffing:

(A) The assigned certifier or the certification supervisor; and

(B) The assigned caseworker of each child or young adult in the home or each caseworker's supervisor.

(c) The CPS supervisor or his or her designee must:

(A) Ensure that the staffing discussed in subsection (a) of this section occurs prior to the initial contact unless the timing of the staffing will compromise child safety;

(B) Determine whether the Child Welfare Program Manager, CPS Consultant, and Foster Care Coordinator should be invited to the staffing; and

(C) If the staffing does not occur prior to the initial contact, ensure the staffing occurs the next business day and that all persons identified in subsection (b) of this section share information known by the Department regarding children or young adults placed in the home, the certified family, and any other individuals living in the home.

(d) The CPS worker must complete the following activities during the CPS assessment:

(A) At initial contact, in addition to the requirements in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485, provide the certified family with the appropriate "What you need to know about a Child Protective Service Assessment" pamphlet;

(B) Consult with a CPS supervisor before making the decision to remove any child or young adult from the home;

(C) Provide on-going information to the assigned certifier and to the caseworkers of each child or young adult placed in the home on the status of the CPS assessment; and

(D) Complete the Out of Home Care Investigation report.

(2) Certifier and Certification Supervisor Actions. When the assigned certifier is notified that information received by a screener involving the home of a certified family is referred for a CPS assessment:

(a) Within one business day after the CPS worker has made initial contact, the certifier must contact and notify the certified family and provide them with the following information:

(A) The certifier is available to answer questions related to certification but will not discuss the specifics of the CPS assessment;

(B) The certified family is immediately placed on inactive referral status pending the completion of the CPS assessment;

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(C) The certified family has the option of having a consulting foster parent or relative caregiver available for support during the assessment; and

(D) The names of foster parents and relative caregivers who have agreed to serve as a consulting foster parent or relative caregiver.

(b) Within one business day, the certifier must document the initiation of a CPS assessment and the placement of the certified family on inactive referral status in FACIS provider notes.

(c) Within one business day, the certifier must notify Department staff responsible for placement that the certified family's home is on inactive referral status.

(d) Within 14 days of the notification required in paragraph (2)(a)(B) of this rule, the Department must provide written notification to the certified family that the home has been placed on inactive referral status and place a copy of the written notification in the certification file.

(e) The certifier must provide ongoing information regarding the certified family and any individuals living in the home to the assigned CPS worker and the caseworkers of each child or young adult placed in the home.

(f) The certification supervisor must ensure that the actions required in subsections (a) through (e) of this section are completed if the certifier is unavailable.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08

413-200-0424

Department Actions at the Conclusion of the CPS Assessment

(1) CPS Worker and Supervisor Actions.

(a) In addition to the actions required in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485, the CPS worker must convene a staffing within five business days of the completion of the CPS assessment to:

(A) Share information acquired during the CPS assessment, and the results of the CPS assessment;

(B) Discuss and determine whether any additional actions described in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485 are appropriate;

(C) Determine who needs to be notified of the disposition of the CPS assessment and determine which staff will be responsible for providing notification;

(D) Discuss certification actions that have been taken and whether any additional actions described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296 are appropriate.

(b) The CPS worker must ensure that the following staff members are invited to the staffing:

(A) The CPS supervisor;

(B) The assigned certifier or the certification supervisor; and

(C) The caseworkers assigned to each child or young adult placed in the home of the certified family or their respective supervisors.

(c) The CPS supervisor or his or her designee must:

(A) Ensure that the staffing, discussed in subsection (a) of this section occurs;

(B) Determine whether the Child Welfare Program Manager, CPS Consultant, and Foster Care Coordinator should be invited to the staffing; and

(C) Approve notification of the following individuals of the disposition of the CPS assessment:

(i) The attorney for the child;

(ii) The court appointed special advocate (CASA) for the child;

(iii) The child's parents;

(iv) Any attorney representing the child's parents; and

(v) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(D) The supervisor may authorize an exception to the notification of a child's parents and any attorney representing a child's parents required in paragraph (C) of this subsection if the notification may interfere with an investigation or assessment or jeopardize the child's safety.

(d) At the conclusion of any CPS assessment, regardless of the disposition, the CPS supervisor must immediately forward a copy of the Out of Home Care Investigation Report to the assigned caseworkers, the certifier, the CPS Consultant, and the Foster Care Coordinator.

(2) Assigned Caseworker Actions.

(a) Within ten business days of the Department determining the disposition of a CPS assessment involving the alleged abuse of a child placed in the home of a certified family, the caseworker for the child must notify the individuals identified in paragraph (1)(c)(C) of this rule of the disposition unless an exception, described in paragraph (1)(c)(D) of this rule, is authorized by the CPS supervisor or his or her designee.

(b) Within ten business days of the conclusion of a law enforcement determination involving the alleged abuse of a young adult placed in the home of a certified family, the caseworker for the young adult must notify the individuals identified in paragraph (1)(c)(C) of this rule of the disposition, unless notification may interfere with an investigation or assessment or jeopardize the young adult's safety is authorized by the caseworker's supervisor.

(3) Certifier and Certification Supervisor Actions.

(a) At the conclusion of the CPS assessment, during or within five business days of the meeting required in subsection (1)(a) of this rule, the certifier and certification supervisor must:

(A) Staff the case and review all the information gathered during the CPS assessment;

(B) Determine whether the information indicates certification actions described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296 should be taken; and

(C) Assure documentation of the results of the staffing in FACIS provider's notes and in the certification file.

(b) After completing the staffing required in subsection (1)(a) of this rule, if the Department determines --

(A) That the Certificate of Approval for the certified family should be revoked, the assigned certifier must initiate revocation of the Certificate of Approval as described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0296.

(B) That inactive referral status should continue because one or more of the conditions in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0294 are present, the assigned certifier must summarize the outcome of the assessment and the reasons for continuing inactive referral status in a letter delivered to the certified family within 10 days of receiving the completed CPS assessment. The certifier must retain a copy of the letter in the certification file.

(C) That the certificate will not be revoked after an unfounded or unable to determine disposition, the assigned certifier must:

(i) Submit written documentation supporting the continued certification of the certified family to the District Manager, Assistant District Manager, or Child Welfare Program Manager for approval;

(ii) Upon receiving approval for continued certification from the District Manager, Assistant District Manager, or Child Welfare Program Manager, remove the certified family from inactive referral status;

(iii) Within ten business days of receiving approval from the District Manager, Assistant District Manager, or Child Welfare Program Manager, send written notification to the certified family that the home is no longer on inactive referral status and retain a copy of the written notification in the certification file; and

(iv) Notify Department staff responsible for placement that the certified family is no longer on inactive referral status.

(4) The CPS worker or supervisor, and the certifier or supervisor must meet with the certified family within ten business days of the completion of the CPS assessment to explain the disposition and any certification actions that will be taken unless the certified family declines the opportunity for a meeting.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 16-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 413-130-0000, 413-130-0005, 413-130-0010, 413-130-0020, 413-130-0030, 413-130-0040, 413-130-0050, 413-130-0060, 413-130-0070, 413-130-0075, 413-130-0080, 413-130-0090, 413-130-0100, 413-130-0110, 413-130-0115, 413-130-0120, 413-130-0125, 413-130-0127, 413-130-0130

Subject: OAR 413-130-0000 through 413-130-0130 about the eligibility criteria for the Adoption Assistance program are being amended to make changes to the eligibility criteria and enable children adopted through Tribes with eligibility under Title IV-E (of the Social Security Act) to be eligible to receive Adoption Assistance. These rules are also being amended to clarify key terms, replace old

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terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

Rules Coordinator: Annette Tesch — (503) 945-6067

413-130-0000

Purpose

The purpose of these rules (OAR 413-130-0000 to 413-130-0130) is to set forth criteria used to determine eligibility for the Adoption Assistance program. The Department's Adoption Assistance program is for eligible Oregon children. Establishment of adoption assistance for children placed into Oregon from another state is the responsibility of the sending state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0005

Values

(1) Every child needs and deserves a safe, nurturing and permanent home.

(2) Where eligible adoptive families and children need individualized supports, and meet the criteria for the Adoption Assistance program, the Adoption Assistance program should be used.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0010

Definitions

The following definitions apply to OAR 413-130-0000 to 413-130-0130:

(1) "Adoption assistance" means financial and medical assistance to adoptive families to assist them with the costs associated with their adoptive child's needs. Financial benefits are funded by the Department's adoption assistance budget. Assistance may be in the form of cash, medical coverage, an agreement only, or special payments.

(2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child. The adoption assistance agreement must:

(a) Specify the nature and amount of any payments, services and assistance to be provided under such agreement;

(b) Stipulate that the agreement must remain in effect regardless of the state in which the prospective adoptive parents reside; and

(c) Contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the prospective adoptive parents and the child move to another state while the agreement is effective.

(3) "Adoption assistance benefits" mean all or any portion of the adoption assistance package of benefits which include monthly payments, nonrecurring payment, special payments, and medical assistance.

(4) "Adoption assistance payments" mean adoption assistance payments paid monthly by the Department to the family on behalf of the child which are determined by negotiation between the adoptive family and the Department, considering relevant factors which include but are not limited to the needs of the child, the services required to meet those needs, cost of such services, the family's ability to pay for the services, and the community resources available.

(5) "Adoption Assistance Review Committee" is a committee composed of field and central office staff who have expertise in the area of adoption. It meets monthly, or as necessary.

(6) "Agreement only" is an agreement between the Department and the family signed prior to the finalization of the adoption, to provide adoption assistance if a need for payment or medical coverage arises prior to the child's 18th birthday.

(7) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Foster care" is 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(10) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise dispensed with so that the child may be adopted.

(11) "Licensed adoption agency" means an agency currently licensed in Oregon under the provisions of ORS 418.225 to 418.325 to provide adoption services.

(12) "Medical assistance" means payment for medical services in accordance with the Department's administrative rules.

(13) "Nonrecurring expenses" mean a one-time payment up to \$1,500, which the Department may pay to an adoptive family to assist with the expenses incurred in legally finalizing the adoption of a special needs child. Nonrecurring expenses may include the reasonable and necessary adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child.

(14) "Payment" means cash assistance to adoptive families to meet the child's needs.

(15) "Private child caring agency" means any private organization providing day treatment, adoption placement, residential care, foster care or other similar services for children, but does not include foster homes certified by the Department and homes established and maintained by fraternal organizations for the exclusive use of membership.

(16) "Qualified vendor attorney" is an attorney who has a price agreement with the Department to process the adoption of a child who is eligible for adoption assistance for the currently established vendor fee plus costs for filing and birth certificates.

(17) "Special payments" mean payment for unanticipated, short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid as negotiated between the Department and the family.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0020

Eligibility Criteria for Children

A child who is in the custody of the Department, a Tribe with a Title IV-E Agreement, or a licensed adoption agency in Oregon may be eligible for adoption assistance, including monthly assistance payments, medical coverage, an agreement only, and special payments. In order to be eligible, the child must meet the requirements of all three of the following sections which establish special needs status:

(1) The state has determined that the child cannot or should not be returned to the home of his or her parents. This decision is based on one of the following:

(a) An order from a court of competent jurisdiction terminating parental rights;

(b) The existence of a petition for termination of parental rights;

(c) For children under the jurisdiction of the court, a signed relinquishment;

(d) For children not under the jurisdiction of the court, a signed relinquishment and a subsequent court finding signed within six months of the date the child was last living with the parent that it would be contrary to the welfare of the child to return home at that time; or

(e) In the case of an orphan, verification of the death of the parent or parents.

(2) The child has at least one of the following factors or conditions which make adoptive placement difficult to achieve:

(a) A documented medical, physical, mental, emotional condition or other clinically diagnosed disability, or a documented history of abuse or neglect or other identified predisposing factor that places the child at risk for future problems that need treatment.

(b) Is a member of a sibling group which will be placed together and is difficult to place because there are three or more children, or if in a sibling group of two, at least one of the children is six years of age or older.

(c) Is a member of an ethnic, racial, or cultural minority (such as African American, Hispanic, Asian, Indian, or Pacific Islander).

(d) Is eight years of age or older.

(3) A reasonable but unsuccessful effort to place the child with appropriate adoptive parents for adoption without assistance has been made. The exception to this requirement is where it would not be in the best interests of the child.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

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413-130-0030

Eligibility for Nonrecurring Costs Reimbursement

Any child who meets the criteria in OAR 413-130-0020 will also be eligible for reimbursement of the nonrecurring expenses. In addition, a child being adopted by an Oregon resident who is not the responsibility of the Department or an Oregon licensed adoption agency is also eligible for reimbursement of nonrecurring expenses if all other eligibility requirements are met (see OAR 413-130-0020). If the child is eligible for adoption assistance through a state other than Oregon, the other state is responsible for any nonrecurring expenses.

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

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0040

Adoption Assistance Eligibility

(1) The Department will make efforts to establish Title IV-E eligibility for any child who meets the special needs criteria (OAR 413-130-0020). Licensed adoption agencies must make all requested efforts to assist the Department in establishing Title IV-E eligibility.

(2) In addition to the special needs criteria, a child must meet the requirements of one of the following subsections to be eligible for adoption assistance:

(a) The child's eligibility for Title IV-E foster care was established at the time of removal.

(b) The child meets all eligibility requirements for Supplemental Security Income (SSI) benefits.

(c) The child's payments in a certified family home or private child caring agency are covered by the foster care maintenance payment being made for his or her minor parent.

(d) The child was determined eligible for adoption assistance payments with respect to a prior adoption and is now available for adoption because of the following:

(A) The prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated or relinquished; or

(B) The child's adoptive parents have died.

(3) In addition to the special needs criteria (OAR 413-130-0020) and the requirements of section (2) of this rule, a child must meet the following requirements, as applicable:

(a) For a private agency adoption, the child must have been voluntarily placed with the private agency in out-of-home care and Title IV-E eligible in the month the voluntary agreement was signed.

(b) Judicial Determination Criteria. A "contrary to the welfare" or "best interest" ruling is not required for children receiving SSI, or for children whose eligibility is based on their minor parents' receipt of foster care payment while placed with their minor parents in foster care. For all other children, a judicial determination that it is "contrary to the welfare of the child to remain in the home" or is in the "best interest of the child to be removed from the home" must be contained in one of the following:

(A) The first court order of removal for a child removed by court order.

(B) A court order signed within six months of the month the child last lived with a specified relative if the child's removal was via parental relinquishment only. Documentation of the date of the signing of the court order is necessary.

(C) A court order with a finding made within 180 days of the date that the child voluntarily entered care, and signed within six months of the date the child was last living with the parent.

(c) The child must be a United States citizen or a "qualified alien" as described at OAR 413-100-0210(2).

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0050

Availability of New Assistance and Rate Adjustments

The availability of state funds governs the rate of payments which may be obligated. If all of the adoption assistance funds are obligated, the Department continues to accept and process applications and requests for increases in assistance and establishes a waiting list. Assistance agreements will be granted in the order of the date of approval as funds become available.

(1) Foster care payments end when adoption assistance payments begin. Medical coverage continues until the adoption assistance payment is negotiated, agreements are signed, and adoption assistance benefits begin.

(2) When a child is legally free for adoption, the Department field staff completes the adoption assistance agreement with the family and submits it to the Adoption Assistance program no later than 60 days from the

date the family is selected. Within 60 days of the receipt of the completed adoption assistance agreement, adoption assistance program staff completes the processing of the application. The adoption assistance application may be initiated earlier if the adoptive family has been selected and the child is not yet legally free.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0060

Agreement Only

(1) An agreement only is entered into between the Department and the adoptive parent or parents when there is no current need for adoption assistance, the parent or parents request such agreement, and the child meets adoption assistance special needs criteria.

(2) The agreement only becomes effective on the date the completed adoption assistance agreement is approved and signed by the Department, and automatically terminates upon the child's 18th birthday.

(3) The adoptive parent or parents must make a written request to the Department to negotiate an agreement only prior to initiation of adoption assistance benefits. The parent or parents must provide documentation to establish the child's need for service and costs of service at the time assistance is requested.

(4) If a family determines that they do not want an agreement only, the family must notify the Department in writing of their decision not to accept an agreement only.

(5) Agreement only adoption assistance agreements are governed by policy for adoption assistance payment and medical assistance agreements, payments, and procedures except as noted in these rules (OAR 413-130-0000 to 413-130-0130).

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0070

Adoption Assistance Payments

(1) The rate of adoption assistance payments is determined by negotiation between the adoptive family and the Department. If necessary, the adoption assistance coordinator conducts the final negotiation and any future renegotiation. Consultation from the adoption assistance coordinator is available during the negotiation.

(2) To establish the amount of an adoption assistance payment, the Department considers relevant factors which include but are not limited to, the needs of the child, the services required to meet those needs, cost of such services, the family's ability to provide these services, and the community resources available.

(3) The amount of adoption assistance payment will be negotiated prior to the completion of the adoption assistance agreement. Adoptive parents may request adjustment of the adoption assistance payment amount at any time, to reflect the child's current needs and family circumstances. The adoption assistance benefits will take effect upon completion of the adoption assistance agreement for a child who is legally free for adoption and in a home that the Department or the private agency has designated as the adoptive placement.

(4) Medicaid, private insurance, public education, and all community resources must be considered as resources for the child and the family when negotiating the amount of adoption assistance. Income to the child from sources such as Social Security and Veterans benefits are considered in negotiating the adoption assistance payment, but will not necessarily be deducted dollar for dollar from the amount of adoption assistance payment.

(5) The rate of the adoption assistance payment may not exceed what the child would currently require if placed in a certified family home. When a child's needs exceed the regular foster care rate (determined by the age of the child), verification of the need for a higher foster care rate must be shown by completed Personal Care Services Foster Care Authorization (CF 0172A) and Special Rate Foster Care Authorization (CF 0172A (NPC)). When the child is not currently in foster care or there are no recently completed Special Rate Foster Care Authorization forms available, other appropriate documentation may be accepted, for example: a detailed letter from the parent describing the child's needs with supporting documentation such as CDRC reports, therapist assessment, school report, or psychological evaluation.

(6) When adoptive parents divorce, the Department may request updated information, including financial, to reflect the change in family circumstances. Upon receiving a request from an adoptive parent for change of payee due to divorce, the Department will notify the other parent of the request. If the change of payee is challenged, a legal document describing custody is required.

ADMINISTRATIVE RULES

(7) Adoptive parents who move out-of-state continue to be eligible for adoption assistance benefits. Medical coverage for the child may change (see OAR 413-130-0100).

(8) Adoption assistance payments may begin when all of the following criteria are met:

(a) The child is legally free for adoption;

(b) An adoption assistance agreement has been signed by the adoptive parent or parents and by the Department representative;

(c) The Department or a private agency has designated this family as the adoption placement.

(9) Adoption assistance payments may be retroactive to the date of the signed adoption assistance application if the child was legally free for adoption and in the designated placement on this date, and no foster care payment was made for the same period.

(10) Adoption assistance payments will be made at the end of each month of eligibility.

(11) Adoption assistance benefits paid to adoptive parents by the Department are inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of this state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0075

Renegotiation of Amount of Adoption Assistance Payment

(1) An adoptive parent may make a request to the adoption assistance coordinator for an increase in the agreed-upon amount of adoption assistance benefits based upon the following:

(a) Changes in the child's needs.

(b) Changes in the family's circumstances.

(2) Renegotiation of the adoption assistance payment amount will be based on consideration of relevant factors which include but are not limited to the current needs of the child, the services required to meet those needs, cost of such services, the family's ability to pay these services, and the community resources available.

(3) The renegotiated adoption assistance monthly payment amount may in no case be retroactive more than 24 months.

(4) When a change in monthly payment is negotiated, a new agreement stating the adjusted amount must be signed by the parents and the adoption assistance coordinator prior to instituting the new payment rate.

(5) If, after negotiation, the adoptive parent does not agree with the revised amount, the parent may appeal this decision as provided in OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats Implemented: ORS 418.330 - 418.340

Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0080

Payment for Nonrecurring Expenses

(1) The Department may make a one-time payment of up to \$1,500 to an adoptive family for nonrecurring expenses to assist with the costs incurred in legally finalizing the adoption of a special needs child, such as adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child. Other expenses are defined as the costs of adoption incurred by, or on behalf of, the parents and for which the parents carry the burden of payment, such as the adoption study, health and psychological examinations, supervision of the placement prior to adoption, transportation, and the reasonable costs of lodging and food for the child or the adoptive parents during travel when necessary to complete the adoption process. This payment may not duplicate expenses covered by Interstate Compact for Placement of Children, expenses covered by a Department contract with a private agency, or expenses already covered by some other resource available to the adoptive family.

(2) Documentation of the nonrecurring expenses will be required and must be submitted prior to execution of the adoption assistance agreement. The agreement, indicating the nature and amount of the nonrecurring expenses, must be signed prior to the final decree of adoption.

(3) The legal fees, when reimbursement is requested, are included in the nonrecurring expenses. It is the responsibility of the adoptive family to choose a privately retained attorney or enter into a legal fees agreement with a "qualified vendor attorney". The Department will make payment directly to the qualified vendor attorney after the adoption is legalized. For other attorneys, the adoptive family is responsible for payment, and the Department will reimburse the family for reasonable charges. Reasonable charges are the current vendor rate, and only in extraordinary circumstances may a higher amount be considered.

(4) Nonrecurring payments will be made when the Department receives the final general judgement of adoption.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0090

Special Payments

Special Payment for unanticipated, short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid may be approved in exceptional cases as negotiated between the Department and the family. The Department may authorize Special Payments for a limited duration, subject to Department's discretion and availability of resources. The family must make documentation available to the Department when requested. Special Payment will be made to the adoptive family who will then be responsible to reimburse the provider for services.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0100

Medical Assistance

(1) Children will be eligible for Medicaid coverage if one of the following subsections is met:

(a) The child was receiving Title IV E foster care payments, Temporary Assistance to Needy Families (TANF), or SSI benefits at the time the adoptive placement was approved.

(b) The child and adoptive parents meet the income and resource standards of the TANF program administered by the Office of Self Sufficiency Programs.

(c) Prior to the execution of the adoption assistance agreement, the child was not Title IV E eligible, but was receiving or was eligible to receive Medicaid under the Oregon Health Plan, and the child has a documented special need for medical or rehabilitative services, or services that preclude adoption without receipt of Medicaid benefits.

(d) Prior to the execution of the adoption assistance agreement, the child was not eligible for Medicaid coverage because the child had income available above Department standards for Medicaid. However, the child had a condition which required a special foster care rate plus the standard foster care rate which was greater than the amount of the child's income.

(2) Oregon families for whom eligibility for medical assistance has been established are issued medical identification for the child through the Division of Medical Assistance Programs. Payment for medical services will be in accordance with Department administrative rules.

(3) Medical coverage for Title IV E eligible children is provided by the medical assistance program in the state where the child resides:

(a) If the child is placed outside the adoptive home and is eligible for federal funding through Title IV E or SSI, the state in which the child resides will provide medical coverage in accordance with the rules of that state even if the adoptive family resides in a separate state.

(b) If the adoptive family moves to another state or the child is placed for adoption in a state other than Oregon, the Department will provide the documentation necessary to assist the adoptive family to obtain Medicaid coverage.

(c) The Department will provide written verification of the child's Title IV E eligibility to the appropriate coordinator of the adoption assistance program in the state where the adoptive family is residing in order to facilitate Medicaid medical coverage.

(4) Medical coverage for children who are not eligible for Title IV E will be provided by the Division of Medical Assistance Programs under the rules of the Oregon Health Plan. If the child is placed in another state, or the adoptive family moves from Oregon to another state, the child may continue to receive medical coverage from Oregon, except in those cases where the other state will provide the Medicaid coverage (see section (3) of this rule).

(5) An adoption assistance agreement shall be signed by the adoptive parents and the Department which documents that the child is eligible for adoption assistance, and that medical coverage has been requested.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

ADMINISTRATIVE RULES

413-130-0110

Administration of Approved Adoption Assistance

(1) It is the responsibility of Department staff and licensed private agency staff to notify or advise prospective adoptive parents of the availability of adoption assistance for children with special needs, provide adoptive parents with a copy of the adoption assistance policy, and assist the family in making application, if appropriate.

(2) Prospective adoptive parents must submit a written application for adoption assistance to the central office Permanency and Adoptions Unit through their respective Department branch office worker or private adoption agency worker.

(3) Prospective adoptive parents who apply for adoption assistance must be approved by their respective adoption agency as being suitable adoptive parents who meet all state standards including certification standards.

(a) Licensed adoption agencies recommending adoption assistance for prospective adoptive parents are responsible to verify and document on the adoption assistance application that efforts were made to place the child without adoption assistance.

(b) The Department branch offices submitting applications must assure that the adoptive placement status has been approved by the central office Adoption Unit.

(4) Prior to the finalization of adoptions and issuance of any benefits, written adoption assistance agreements must be completed that meet all of the following requirements. The agreement must:

(a) Be signed by each adoptive parent and the adoption assistance coordinator. The adoption assistance agreements establish the child's monthly eligibility for benefits as well as nonrecurring expenses.

(b) State the duration of the agreement.

(c) State the amount of assistance benefits (if any), and specify:

(A) The amount of the adoption assistance monthly payment (if any); and

(B) The nature and amount of any other payments, services, and assistance to be provided, including nonrecurring adoption expenses.

(d) State that the agreement remains in effect regardless of the state of residence of the adoptive parents and the child.

(e) State whether the child will receive medical benefits, and specify the child's eligibility for Title XIX and Title XX.

(f) State that the adoptive parents have the right to a fair hearing.

(5) The initial effective date of adoption assistance shall be determined by the central office Adoption Unit, taking into consideration the request of the adoptive family and the recommendations of the adoption agency or Department branch. The effective date may not be prior to the completion of a signed assistance agreement, and must be effective no later than the date the adoption is finalized.

(6) Annually the DHS adoption assistance program sends a letter to adoptive families, except those with an agreement only, inquiring whether there has been a change in circumstances or need for benefits.

(7) No assistance may be provided to parents if the parents are no longer legally and financially responsible for the support of the child, or the child is no longer receiving care and support from the adoptive parents. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

(8) In the case of an adopted child who becomes legally free for adoption due to the adoptive parent or parents' relinquishment of the child, the termination of the adoptive parent or parents' parental rights to the child, or the death of the adoptive parent or parents, the determination of eligibility of the adopted child for adoption assistance remains based on the eligibility of the child as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance benefits. The child must also meet special needs criteria at the time the child again becomes available for adoption. (This rule is intended to meet the requirements of Sec. 473 (a)(2)(C) of the Social Security Act, 42 USC 673.)

(9) If a child receiving adoption assistance benefits is placed in foster care or residential care, adoption assistance benefits may be adjusted, continued, or suspended. If the family is involved in the child's treatment, and the plan is for the child to return home, the family may ask to have the adoption assistance benefits suspended, continued, or adjusted to reflect current expenses. When the child returns to the care of the parents, adoption assistance benefits may be reviewed upon request by the parent.

(10) Adoptive parents must immediately inform the agency when a change in circumstances indicates that there is no longer a need for adoption assistance benefits.

(11) The Department may terminate the agreement upon 30 days written notice to adoptive parents when the child is no longer in the home, and the adoptive parents are no longer providing any support for the child.

(12) An adoption assistance agreement automatically terminates, as required by Oregon law, when the child is 18 years old.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 22-1999, f. & cert. ef. 11-24-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0115

Adoption Assistance Review Committee

(1) The Adoption Assistance Review Committee will serve as a consultation and review body for the adoption assistance program, for example:

(a) The adoption assistance program staff may, at their discretion, refer unusual or exceptionally costly benefit requests to the adoption assistance review committee for consultation; or

(b) If, during negotiations of adoption assistance benefits, the adoption assistance staff and the prospective adoptive parents are unable to reach agreement, the matter may be referred to the committee for review at the request of either the adoption assistance staff or the adoptive parents.

(2) The prospective adoptive parents and the caseworker must provide written documentation for the committee's consideration.

(3) The caseworker for the prospective adoptive parents may participate in the committee by phone.

(4) The committee reviews relevant materials and provides a recommendation regarding level of benefits to the adoption assistance coordinator. The adoption assistance review committee takes into consideration the special needs of the child and the financial circumstances of the prospective adoptive parents.

(5) If the family requests further review of the adoption assistance benefits package offered to the family by the adoption assistance coordinator, subsequent to the recommendation of the Adoption Assistance Review Committee, the permanency and adoptions manager reviews the materials and makes a decision. If the family remains unsatisfied, they may request a contested case hearing to appeal the level of benefits as described in OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0120

Appeal Procedures of Adoption Assistance

(1) Except as provided in OAR 413-130-0125, at any time the Department takes action to deny the application, or reduce or terminate adoption assistance payments, recipients of adoption assistance benefits must be notified of their right to a contested case hearing, except for terminations required by law, termination on the child's 18th birthday, or terminations required by legislative action.

(2) If agreement cannot be reached between the Department and the adoptive parents on the amount or type of benefits, the adoptive parents have the right to request a review or a contested case hearing within 30 days of receipt of notification of this right. Excluded from the right of appeal are Special Payments described in OAR 413-130-0090.

(3) Requests for a contested case hearing must be addressed in writing to the manager of the Department's adoptions program.

(4) The adoption manager or designee must:

(a) Assure that the individual who requests the hearing receives a written statement that sets out the facts and the particular sections of the statutes and rules on which the Department based its initial decision; and

(b) Forward the contested case hearing request to the Office of Administrative Hearings (OAH).

(5) Hearings will be conducted by OAH. (See OAR 413-010-0500 and Child Welfare Policies I-A.5.2 and I-A.5.2.1)

(6) The Administrative Law Judge will prepare and distribute a proposed order in compliance with OAR 413-010-0500, Child Welfare Policies I-A.5.2 and I-A.5.2.1, and according to any interagency agreement between the Department and OAH.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 11-1997, f. & cert. ef. 10-6-97; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0125

Budgetary Reductions of Adoption Assistance

(1) Once a child is adopted and determined to be eligible for Title IV-E adoption assistance, the adoption assistance payments may not be automatically adjusted without the agreement of the adoptive parents for any reason other than an across-the-board reduction in foster care maintenance rates. In the event that legislative or executive branch actions impacting the Department's budget or expenditure authority makes it necessary for the Department to implement budget reductions to the adoption assistance program, the Department notifies all recipients of adoption assistance of the following:

ADMINISTRATIVE RULES

- (a) The reason for the reduction;
 - (b) The percentage or amount that adoption assistance will be reduced; and
 - (c) The effective date of the reduced adoption assistance payment.
- (2) Reductions to adoption assistance payments pursuant to this rule will be applied uniformly to all recipients of adoption assistance.
- (3) Reductions to adoption assistance payments pursuant to this rule are not subject to negotiation between the Department and the adoptive family.
- (4) Reductions to adoption assistance payments pursuant to this rule are not subject to a contested case hearing.
- (5) Reductions to adoption assistance pursuant to this rule do not constitute a change in circumstances warranting a change in the recipient's adoption assistance benefits.
- (6) It is the intent of the Department to restore as much as possible any adoption assistance which has been reduced by operation of this rule. If additional funding becomes available to the Department to restore, in whole or in part, the reductions to adoption assistance payments required by this rule, the Department will notify all recipients. If legislative or executive branch actions impacting the Department's budget or expenditure authority give the Department the ability and authority to restore, in whole or in part, adoption assistance that has been reduced by operation of this rule, the Department will notify all recipients who were affected by the corresponding reduction of adoption assistance of the percentage of or amount of the increase, and the effective date of the increase. Any payment increase under this rule is applied uniformly to all recipients of adoption assistance who were affected by the corresponding reduction.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 38-2003(Temp), f. & cert. ef. 11-19-03 thru 5-17-04; CWP 4-2004, f. & cert. ef. 4-1-04; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0127

Adjustments to Adoption Assistance

Effective November 1, 2003, adoption assistance benefits payable under an adoption assistance agreement in effect on October 31, 2003 are changed as follows:

- (1) Monthly payments are increased by 8.108 percent.
- (2) Except as provided in section (3) of this rule, nonrecurring payments and special payments are not changed.
- (3) A special payment is increased by 8.108 percent if it was payable under an adoption assistance agreement that was in effect on January 31, 2003; was reduced on February 1, 2003; and remained in effect continuously through October 31, 2003.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 4-2004, f. & cert. ef. 4-1-04; CWP 16-2008, f. & cert. ef. 7-1-08

413-130-0130

Post Finalization Applications for Adoption Assistance

(1) An adoptive parent may request the opportunity to apply for adoption assistance after the adoption has been finalized based on extenuating circumstances such as:

(a) Relevant facts regarding the child, the biological family, or child's background were known, but not shared with adoptive parents prior to legalization;

(b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family and the family's financial need has changed;

(c) Determination was made by the state that a child was ineligible for assistance, but information becomes known which indicates it would be appropriate to review this determination; or

(d) Failure by the state to advise adoptive parents of a special needs child of the availability of adoption assistance.

(2) Adoptive parents shall submit a written request to the adoption assistance coordinator stating their wish to apply for adoption assistance after an adoption has been legally finalized.

(3) Upon receipt of the written request, the Department adoption assistance staff will determine, within thirty days, whether the child meets Title IV E eligibility requirements.

(4) When adoptive parents request that the Department provide historic information regarding the child in order to determine eligibility for adoption assistance, the Department may obtain non-identifying genetic, social, and health history as provided by ORS 109.425 through 109.507. In addition, the Department may request a court order to review the sealed adoption file.

(a) If it is determined that a child meets Title IV E eligibility requirements, federal policy requires a fair hearing be held before the state may provide adoption assistance benefits:

(A) The adoption assistance coordinator shall write a summary of the situation and submit a hearing request form and appropriate documentation

to the Office of Administrative Hearings within 45 days of receipt of the adoptive parent request for a fair hearing.

(B) Adoptive parents have the responsibility of proving that extenuating circumstances exist. The Department may provide corroborating facts to the adoptive parents or the Administrative Law Judge.

(C) The hearing will be conducted by an Administrative Law Judge in compliance with rules governing contested case hearings.

(b) If a post legal fair hearing decision finds that extenuating circumstances exist, an adoption assistance application may be signed, effective the date of the fair hearing.

(5) If it is determined that a child does not meet Title IV E eligibility requirements, the adoption assistance coordinator shall prepare information for the adoption manager's review including information submitted by the adoptive parents and information from Department records. The manager will decide if extenuating circumstances (see section (1) of this rule) exist which justify accepting an application from the family.

(a) A written finding will be sent to the adoptive parent within 30 days.

(b) If the adoption manager finds that extenuating circumstances do not exist, the adoptive parents may request a contested case hearing under OAR 413-130-0120. The Administrative Law Judge in such a hearing reviews whether extenuating circumstances exist so that the adoptive parents can submit an application for adoption assistance. Whether the adoption assistance application is approved is a separate determination by the Department.

(6) If the decision, through fair hearing or adoption manager review, is that the family is eligible to apply for benefits on behalf of the child, and the application results in the award of adoption assistance benefits:

(a) In no case shall the monthly payments (in the form of a one time lump sum payment) be retroactive for more than 24 months from the date of the signed application; and

(b) If after negotiation, the adoptive parent does not agree with the amount negotiated, the parent may appeal this decision under OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08

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

Rule Caption: Adopting OAR about eligibility for State Funded Post Transition Benefit Alternative (TBA) benefits.

Adm. Order No.: SSP 14-2008(Temp)

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08 thru 10-31-08

Notice Publication Date:

Rules Adopted: 461-135-0507

Subject: OAR 461-135-0507 is being adopted to establish the eligibility criteria and procedures for the State Funded Post-TBA benefits. This rule specifies that clients whose Transitional Benefit Alternative benefits have ended and who continue to receive Post-TANF benefits may be eligible for \$50 in State Funded Post-TBA benefits. These benefits are only available from July 1, 2008 through October 31, 2008. These benefits are not prorated, not counted as income, not considered a duplicate benefit, and may only be used for eligible food as defined in 7 CFR 271.2. The Department sends eligible clients, when approved, a notice specifying when their benefits will begin and end, and the benefit amount. These benefits end if the client no longer receives Post-TANF benefits or is no longer an Oregon resident.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0507

State Funded Post-TBA Benefits

This rule establishes the eligibility for State Funded Post-TBA benefits.

(1) The State Funded Post-TBA benefit is a public assistance benefit for clients whose TBA benefits authorized under OAR 461-135-0506 have ended and the food stamp filing group (OAR 461-110-0370) is receiving Post-TANF benefits under OAR 461-135-1250.

(2) The amount of the State Funded Post-TBA benefit is \$50. State Funded Post-TBA benefits are not pro-rated.

(3) State Funded Post-TBA benefits are excluded from income.

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(4) State Funded Post-TBA benefits are not considered a duplication of benefits under OAR 461-165-0030.

(5) The eligibility period for State Funded Post-TBA benefits is July 1, 2008 through October 31, 2008. Notwithstanding this or any other rule, a client may receive a maximum of four months of State Funded Post-TBA benefits and may only receive these benefits during the eligibility period.

(6) The Department will deposit the State Funded Post-TBA benefits directly to the client's EBT FS account.

(7) State Funded Post-TBA benefits may only be used for eligible food purchases as defined in 7 CFR 271.2.

(8) A client becomes ineligible for State Funded Post-TBA benefits and the benefits end if the client does not meet the eligibility requirements specified in this section. In order to be eligible for State Funded Post-TBA benefits, a client must:

(a) Have been a TBA recipient whose TBA benefits have ended between June 1, 2008 and September 30, 2008;

(b) Be receiving Post-TANF benefits; and

(c) Be a resident of Oregon (see OAR 461-120-0010).

(9) When a client is approved for State Funded Post-TBA benefits, the Department sends a basic decision notice (see OAR 461-001-0000) that informs the client when benefits will begin, when benefits will end and the benefit amount. No other notice is required to end benefits when the eligibility period ends October 31, 2008.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: SSP 14-2008(Temp), f. & cert. ef. 7-1-08 thru 10-31-08

Rule Caption: Closing a Qualified Medicaid Beneficiaries sub-program to new applicants.

Adm. Order No.: SSP 15-2008(Temp)

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08 thru 12-28-08

Notice Publication Date:

Rules Amended: 461-135-0730

Subject: OAR 461-135-0730 about the specific requirements for the Qualified Medicare Beneficiary program (QMB) is being amended to comply with federal law and restate the criteria for the QMB program by closing the QMB-SMF sub-program to new applicants.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0730

Specific Requirements; QMB

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, an individual must be receiving Medicare hospital insurance under Part A. This includes individuals who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-BAS are not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB-DW:

(a) To qualify for the QMB-DW program, an individual must be eligible for Part A of Medicare as a qualified worker with a disability under Section 1818A of the Social Security Act (42 USC 1395i-2a). These are individuals under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) QMB-DW clients are eligible only for payment of their premiums for Part A of Medicare. They may not have eligibility for any other medical assistance program and be eligible for QMB-DW.

(3) The following requirements apply to QMB-SMB:

(a) To qualify for QMB-SMB, an individual must be receiving Medicare hospital insurance under Part A. This includes individuals who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-SMB are not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.

(c) Clients who are institutionalized (reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) are not eligible for QMB-SMB if they have income equal to or greater than 120% of the Federal Poverty Level (FPL).

(d) A need group (see OAR 461-110-0630) with income equal to or greater than 120% of the FPL (see OAR 461-155-0295) may receive QMB-SMB benefits on or after December 1, 2005, except as provided in subsection (3)(e) of this rule.

(e) The QMB-SMB program is subject to an enrollment cap effective July 1, 2008. Because of the cap, an individual with income equal to or greater than 120 percent of the federal poverty level (see OAR 461-155-0295) may not receive QMB-SMB benefits on or after July 1, 2008 except as follows:

(A) An individual who is receiving QMB-SMB on June 30, 2008 is affected by the cap only if the person's benefits are subsequently closed.

(B) An individual eligible for both the OSIPM and the QMB-SMB programs simultaneously is not affected by subsection (e) of this section.

(C) An individual found eligible for QMB-SMB based on a date of request for benefits prior to July 1, 2008, is affected by the cap only if the benefits of the individual are subsequently closed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2006(Temp), f. & cert. ef. 2-6-06 thru 6-30-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08

Rule Caption: Changing Estate Administration OARs affecting public assistance, medical assistance, or food stamp clients.

Adm. Order No.: SSP 16-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 10-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 461-135-0832, 461-135-0835

Subject: OAR 461-135-0832 about definitions used in the Department's Estate Administration rules, OAR 461-135-0832 to 461-135-0845, is being amended to clarify key terms used in the Department's estate administration process. This amendment adds definitions for "blind child", "child under age 21" and "date of request". This rule is also being amended to change the definition of "estate" to include certain inter-spousal transfers of assets for public assistance recipients who die on or after October 1, 2008. This rule is also being amended to change the definition of "living trust" to include an irrevocable trust. This rule is also being amended to replace old terminology with new terminology, to add cross-references to other rules and laws and to follow standard formatting.

OAR 461-135-0835 about claims against the estates of recipients of public assistance is being amended to identify new recovery claim criteria for recipients who die on, or after, October 1, 2008. This rule is being amended to make an inter-spousal transfer of assets subject to estate recovery if such transfer occurs no earlier than 60 months prior to the first date of request for assistance. This rule is also being amended to clarify that any assistance payments, made at any age, are recoverable if they are payments made under the General Assistance provisions of ORS Chapter 411, or categorized as GA. This rule is also being amended to replace old terminology with new terminology, to add cross-references to other rules and laws and to follow standard formatting.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0832

Estate Administration; Definitions

Effective July 18, 1995, for purposes of OAR 461-135-0832 to 461-135-0845 and ORS 411.708, 411.795, 414.105, 416.310, and 416.340, the terms listed below have the meanings ascribed to them herein; provided, however, as used in this section, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 U.S.C. §1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department of Human Services applies the definitions and procedures set forth in OAR 461-135-0832 to 461-135-0845 to recoveries and claims made pursuant to ORS 411.708, 411.795, 414.105, 416.310, and 416.340.

(1) Assets means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death.

(2) Assign means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) Blind child means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initial-

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ly asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

- (a) Vision of 20/200 or less in the better eye with a corrective lens; or
- (b) A limitation in vision field to an angle of 20 degrees or less; or
- (c) Meeting any other SSI criteria for blindness.

(4) Bona fide purchaser for value means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

(5) Child under age 21 means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) Consideration furnished test means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(7) Convincing evidence includes, but is not limited to:

- (a) Recorded documents of title.
- (b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.
- (c) Tax statements or returns.
- (d) Records of banking, financial or other similar institutions.
- (e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.
- (f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(8) Date of Request means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(9) Disabled child means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(10) Estate means:

(a) With respect to the collection of payments made for public assistance provided prior to July 18, 1995, or for exclusively state funded public assistance, all real property, personal property, or other assets included within a recipient's estate, or the estate of the recipient's spouse, as such estate is defined by applicable state probate law.

(b) With respect to the collection of payments made for public assistance provided on or after July 18, 1995:

(A) For recipients who die prior to October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's surviving spouse and any successor-in-interest to the recipient's surviving spouse, through:

- (i) Tenancy by the entirety;
- (ii) Joint tenancy;
- (iii) Tenancy in common;
- (iv) Not as tenants in common, but with the right of survivorship;
- (v) Life estate;
- (vi) Living trust;
- (vii) Annuity purchased on or after April 1, 2001; or
- (viii) Other similar arrangement.

(B) For recipients who die on or after October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death of the recipient, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's surviving spouse and any successor-in-interest to the recipient's surviving spouse, through:

- (i) Tenancy by the entirety;
- (ii) Joint tenancy;
- (iii) Tenancy in common;
- (iv) Not as tenants in common, but with the right of survivorship;
- (v) Life estate;
- (vi) Living trust;

(vii) Annuity purchased on or after April 1, 2001; or

(viii) Other similar arrangement, such as an interspousal transfer of assets, including one facilitated by a court order, which occurred no earlier than 60 months prior to the first date of request established from the recipient's and the recipient's spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the public assistance programs referenced in OAR 461-135-0835(2).

(11) Heir means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(12) Interest means any form of legal, beneficial, equitable or ownership interest.

(13) Intestate means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(14) Intestate succession means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(15) Joint tenancy means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(16) Legal title means legal ownership by a person.

(17) Life estate means an interest in real or personal property that terminates upon the death of a measuring life.

(18) Living trust means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(19) Medical institution means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(20) Ownership documents mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or legal title held by a person.

(21) Permanently institutionalized means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(22) Person means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(23) Personal property means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(24) Real property means all land wherever situated, including improvements and fixtures thereon, and every estate, interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties.

(25) Recipient of property means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(26) Survivor means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(27) Survivorship means an interest in real or personal property that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(28) Tenancy in common means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(29) Time of death means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(30) Value means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not

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reported to the Department by the deceased Medicaid recipient, the value would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 410.070, 411.060, 411.795, 414.105

Stats. Implemented: ORS 411.708, 411.795, 414.105, 416.310, 416.340

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; 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 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08

461-135-0835

Limits on Estate Claims

(1) In the BCCM, GA, GAM, OHP, OSIP, OSIPM, and QMB programs:

(a) The Department has a priority claim against the property or any interest therein belonging to the estate of any deceased person as provided in ORS Chapters 411 and 414. The Estate Administration Unit of the Department (EAU) is authorized to present and file such claim against the estate. It will be treated as a preferred claim and filed in a like manner as the claims of other creditors.

(b) In determining the extent of the estate resources subject to the Department's claim, except as provided in subsection (c) of this section, the Department must disregard resources in an amount equal to the value of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a qualified partnership policy (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to Medicaid benefits received after the effective date of the Medicaid eligibility determination in which a qualified partnership policy was considered and approved. The amount of any Medicaid assistance incurred in a prior Medicaid eligibility period where qualified partnership policy benefits were not considered would not be subject to the estate resource disregard.

(c) There is no disregard of resources under subsection (b) of this section if the client, or the spouse of the client, at any time transferred the value of the qualified partnership policy excluded resource amount to another individual for less than fair market value prior to the death of the client or the client's surviving spouse, or exhausted the disregarded resource amount by purchasing things of value to the client or the client's surviving spouse while either was living.

(d) For recipients who die prior to October 1, 2008:

(A) If there is a surviving spouse, the Department shall have a claim against the estate of the surviving spouse for public assistance paid to the surviving spouse.

(B) In addition, the Department shall have a claim against the estate of the surviving spouse for public assistance paid to the pre-deceased spouse, but only to the extent that the surviving spouse received property or other assets from the pre-deceased spouse through any of the following:

(i) Probate.

(ii) Operation of law.

(C) If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current value (see OAR 461-135-0832) of the property in the surviving spouse's estate.

(D) However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving child under age 21 (see OAR 461-135-0832), no surviving blind child (see OAR 461-135-0832) of any age, and no surviving disabled child (see OAR 461-135-0832) of any age.

(e) For recipients who die on or after October 1, 2008:

(A) If there is a surviving spouse, the Department shall have a claim against the estate of the surviving spouse for public assistance paid to the surviving spouse.

(B) In addition, the Department shall have a claim against the estate of the surviving spouse for public assistance paid to the pre-deceased spouse, but only to the extent that the surviving spouse received property or other assets from the pre-deceased spouse through any of the following:

(i) Probate.

(ii) Operation of law.

(iii) An interspousal transfer, including one facilitated by a court order, which occurs:

(I) Before, on, or after October 1, 2008; and

(II) No earlier than 60 months prior to the first date of request (see OAR 461-135-0832) established from the pre-deceased spouse's and the surviving spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the public assistance programs referenced in section (2) of this rule.

(C) If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current value of the property in the surviving spouse's estate.

(D) However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving child under

age 21, no surviving blind child of any age, and no surviving disabled child of any age.

(2) The amount of the claim is as follows:

(a) Any payments made at any age under the General Assistance provisions of ORS Chapter 411, categorized as GA, are recoverable from the estate of any deceased recipient or the estate of the recipient's spouse. In the GA and GAM programs, the amount of the claim will not exceed the total amount of cash and medical benefits paid. The claim will include benefits provided under the Home and Community-Based Care Waiver program. This applies to all General Assistance programs, even those that are no longer active.

(b) In the BCCM, OSIP AD, OSIP OAA, OSIPM AD, OSIPM OAA, and QMB programs, the amount of the claim shall include all GA category benefits paid at any age and all Title XIX benefits provided after the recipient reached age 55. If the recipient was permanently institutionalized (see OAR 461-135-0832), the claim shall include the total amount of all GA category benefits and Title XIX benefits paid at any age. This applies to all Old Age Assistance and Aid to the Disabled recipients, including those served by Home and Community-Based Care Waiver programs. It also includes recipients covered by programs that are no longer active.

(c) In the OHP, OSIP AB, and OSIPM AB programs, the claim shall include the total amount of GA category benefits paid at any age and all Title XIX benefits provided after the recipient reached age 55. If the recipient was permanently institutionalized, the claim shall include the total amount of GA category and Title XIX benefits paid at any age. The claim shall include benefits provided under the Home and Community-Based Care Waiver program.

(d) In the OSIP, OSIPM-AB, OSIPM AD, and OSIPM-OAA programs, the amount of the claim shall also include the total amount of GA category and Title XIX benefits provided to recipients who were age 55 to 64 on the date the GA category and Title XIX benefits were provided if the benefits were provided after July 18, 1995. GA category and Title XIX benefits will be considered to have been provided to a recipient on the day of provision of medical services for which medical assistance payments are made.

(3) The priority for payment of claims against the estate will be as established under ORS 115.125.

(4) EAU may nominate a personal representative for an estate if the Department has a claim and it appears that no person with a higher preference, as established in ORS 113.085, is willing to be the representative.

(5) Property disposal will be in accordance with OAR 461 135 0838.

Stat. Auth.: ORS 410.070, 411.060, 411.795, 414.105

Stats. Implemented: ORS 411.708, 411.795, 414.105, 416.310, 416.340

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08

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Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.

Adm. Order No.: SSP 17-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Adopted: 461-135-1125, 461-145-0261, 461-160-0551

Rules Amended: 461-001-0000, 461-025-0310, 461-025-0311, 461-025-0375, 461-110-0410, 461-110-0530, 461-110-0630, 461-115-0030, 461-115-0050, 461-115-0651, 461-120-0120, 461-120-0125, 461-120-0330, 461-120-0510, 461-130-0325, 461-135-0010, 461-135-0082, 461-135-0400, 461-135-0570, 461-135-0750, 461-135-0780, 461-135-0875, 461-135-0900, 461-135-1100, 461-135-1102, 461-135-1110, 461-135-1175, 461-140-0010, 461-140-0040, 461-140-0220, 461-140-0242, 461-145-0020, 461-145-0022, 461-145-0080, 461-145-0090, 461-145-0310, 461-145-0490, 461-145-0510, 461-145-0560, 461-145-0582, 461-155-0180, 461-155-0235, 461-155-0250, 461-155-0270, 461-155-0500, 461-160-0010, 461-160-0550, 461-160-0620, 461-160-0800, 461-165-0190, 461-175-0200, 461-180-0040

Rules Repealed: 461-120-0120(T), 461-120-0125(T), 461-135-0082(T), 461-135-0750(T), 461-135-0811, 461-135-0900(T), 461-145-0080(T), 461-155-0250(T), 461-155-0650, 461-155-0690, 461-160-0800(T), 461-160-0810, 461-160-0820, 461-160-0850, 461-175-0200(T)

Subject: OAR 461-001-0000 about the defined terms used in OAR Chapter 461 in the Department's public assistance, medical and food stamp programs is being amended to state how the term "initial

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month” is used in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs when calculating a disqualifying transfer of assets in OAR 461-140-0296.

OAR 461-025-0310 about hearing requests in the Department’s public assistance, medical and food stamp programs and 461-025-0311 about continuing benefits pending a hearing in the Department’s public assistance, medical and food stamp programs are being amended to comply with federal regulations by restating the Department’s policy regarding when clients in the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) are entitled to a hearing and entitled to continuing benefits pending a hearing.

OAR 461-025-0375 about the timeliness and effective date of final orders in contested cases involving the Department’s public assistance, medical and food stamp programs is being amended to restate the Department’s policy regarding the timeliness and effective dates of final orders. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-110-0410 about filing groups in the Department’s Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs is being amended to comply with federal Medicaid guidelines in the Social Security Administration’s Program Operation Manual System SI 00501.010 by restating the Department’s policy on who must be included in the filing group in the OSIP, OSIPM and QMB programs. Previously in the OSIP and OSIPM programs for applicants under the age of 18 in a standard living arrangement the filing group consisted of each parent in the household group, and for applicants age 18 and older the filing group consisted of the applicant and the spouse of the applicant. In the QMB program, in a standard and nonstandard living arrangement, the filing group consisted of the applicant and the spouse of the applicant, and children (under age 21) if the applicant chose to include them in the filing group, and for applicants under age 21 who were not assumed eligible, the filing group included the parents of the applicants. The rule is being amended to change the filing group composition by removing the reference to the age of the applicant in the OSIP and OSIPM programs and replacing it with the term “child” as defined in OAR 461-001-0000, and by removing the reference to the age of the child in the QMB program. The definition of a child (as per 461-001-0000) includes applicants under the age of 18, or under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the applicant for employment.

OAR 461-110-0530 about the financial group in the Department’s public assistance, medical and food stamp programs is being amended to restate the Department’s policy regarding financial group composition in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) for non-standard living situations when there is a community spouse. The rule change clarifies that the community spouse is not included in any other eligibility group.

OAR 461-110-0630 is about the need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) in the Department’s public assistance, medical and food stamp programs. This rule is being amended to restate the Department’s policy about who is included in the need group for the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs so that the rule is consistent with federal regulations and guidelines. This rule is being amended to specify that for OSIP and OSIPM, if an adult is applying, and there is no deeming in accordance with OAR 461-160-0551, then the need group consists of all the members of the financial group. If an adult is applying and there is deeming, then the need group depends on whether the ineligible spouse’s income is more or less than the difference between the two person SSI standard and the one person SSI Standard. If the ineligible spouse’s income is less than the difference, then the need group is the adult who is applying.

If the ineligible spouse’s income is greater than the difference, then the need group is the adult and his or her spouse. If a child is applying, the child is a need group of one.

OAR 461-115-0030 about the date of request in the Department’s public assistance, medical and food stamp programs is being amended to restate Department policy regarding the date of request for the Oregon Health Plan (OHP) medical programs. This rule is being amended by removing the statement that a new date of request is established if the completed OHP application is received by the department more than 30 days after the original date of request.

OAR 461-115-0050 about when an application must be filed in the Department’s public assistance, medical and food stamp programs is being amended to make permanent a temporary rule amended January 28, 2008 and to restate the Department’s requirements related to applying for the Oregon Health Plan standard (OHP-OPU). This rule is being amended to require completion of an application in order to be considered for the OHP-OPU medical program. Currently OHP Standard program applicants whose children or spouse are already receiving medical benefits from the Department of Human Services are not required to complete a new application when requesting OHP Standard benefits for themselves. The rule is being amended to require completion of the “OHP Standard Reservation List Application - OHP Application” (OHP 7210R) in order to be considered for OHP Standard. The OHP 7210R will be mailed to individuals on the OHP Standard Reservation List. Depending upon their placement on the list and the funds available for new enrollees, individuals with a reservation may be mailed an OHP 7210R. Requesters who are mailed the OHP 7210R may be considered for the OHP Standard program.

OAR 461-115-0651 about required verification in the food stamp program is being amended to correctly state the Department’s policy on required verification. This amendment removes the requirement to verify Oregon residency, and requires all countable income to be verified for reported changes for cases in the change reporting system and at recertification for all food stamp cases. The amendment also corrects the policy for cases using the simplified reporting system by specifying that food stamp cases in which every member is elderly or disabled and has no earned income are not required to verify income in the sixth month of the certification period.

OAR 461-120-0120 about the alien status requirements in the (REF) Refugee Cash Assistance and (REFM) Refugee Medical Assistance programs; OAR 461-120-0125 about the alien status requirements in the public assistance, medical and food stamp programs other than Refugee Assistance (REF) and Refugee Assistance Medical (REFM); OAR 461-135-0082 about eligibility for Refugee Case Services, and 461-135-0900 about specific requirements for the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs are being amended to make permanent temporary rules amended January 30, and February 22, 2008; to comply with Section 1244 of Public Law 110-181, National Defense Authorization Act for Fiscal Year 2008 by changing the eligibility period for Iraqi and Afghan special immigrants for REF, REFM, Employment- or Education-Related Day Care (ERDC), Temporary Aid for Needy Families (TANF), Medical benefits, and food stamp benefits and services. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-120-0330 about the requirement to pursue asset in the Department’s public assistance and medical programs is being amended to comply with 42 CFR 608 by adding an exception to the requirement to pursue assets when the client can show good cause.

OAR 461-120-0510 about the age requirements for clients to receive benefits in the Department’s public assistance, medical and food stamp programs is being amended to restate the Department’s age requirements to receive benefits in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs and make the Department’s rule consistent with agency practice by stating that clients under the age of 18 can receive OSIPM-AD even if they do not have SSI. This rule is also being amended to make the Department’s rule consistent with

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agency practice by removing references to Oregon Food Stamp Employment Transition Program, (OFSET). This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-130-0325 about participation requirements in the Food Stamp, Refugee Assistance (REF) and Temporary Aid to Needy Families (TANF) programs is being amended to clarify that in the Food Stamp program, the job quit provisions do not apply when an employer reduces work hours.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to restate the Department's policy regarding individuals who are assumed eligible for the Department's Oregon Supplemental Income Program Medical (OSIPM) program. This rule is being amended to provide that individuals who receive SSI or are deemed eligible for SSI under Section 1619(a) or (b) of the Social Security Act are not assumed eligible for Medicaid if the individual is married and the couple's combined resources cause the client's countable resources to exceed the resource limit using the calculation in OAR 461-160-0580. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-135-0400 about specific requirements in the Employment- or Education-Related Day Care (ERDC) program and OAR 461-165-0190 about payments for child care in the ERDC, Job Opportunity and Basic Skills (JOBS), OFSET and Temporary Aid for Needy Families (TANF) programs are being amended to make the Department's rules consistent with its practices by removing references to Oregon Food Stamp Employment Transition Program (OFSET) Child Care and OAR 461-001-0020.

OAR 461-135-0570 about the eligibility of students in the Food Stamp program is being amended to restate the Department's policy on eligibility for higher education students who live in a dormitory or other living situation with meal plans by treating all students who have meal plans similarly.

OAR 461-135-0750 about the eligibility for individuals in long-term care or wavered services in the Oregon Supplemental Income Program (OSIPM) is being amended to clarify current policy regarding eligibility for OSIPM for individuals receiving long-term care or wavered services. Additionally, the rule is being amended to add OSIPM eligibility for certain children who meet the service eligibility standards for the Medically Involved Children's Waiver, and certain individuals residing in a community-based setting covered by the Independent Choices Program. This rule is being amended to implement the requirements of HB 2406 (2007) and the Medically Involved Children's Waiver. This rule is also being amended to make permanent a temporary rule amended April 7, 2008. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-135-0780 about eligibility for Oregon Supplemental Income Program Medical (OSIPM) program for clients who are eligible under the Pickle Amendment is being amended to clarify and correct the eligibility calculation. This amendment to this rule provides that after the client's current social security benefit amount is multiplied by the decimal in the rule, the result must be rounded down to the next whole dollar amount. This amendment to this rule also provides that adjusted earned income (after earned income deductions) and not countable earned income (gross before deductions) is used in the calculation. This amendment to this rule also provides that the income standard to be used is the Supplemental Security Income (SSI) standard, rather than the OSIP standard. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-135-0811 regarding Oregon Supplemental Income Program Medical (OSIPM, aid to the elderly and people with disabilities) for disabled widows/widowers who lost their SSI because the actuarial reduction for people under the age of 60 increased their

widow/widower's benefits and resulted in terminating the SSI, is being repealed.

OAR 461-135-0875 about the specific requirements for retroactive medical benefits is being amended to restate the Department's policy on eligibility for retroactive medical benefits.

OAR 461-135-1100 about the specific requirements for the Oregon Health Plan (OHP) is being amended to restate the specific requirements for OHP benefits. This amendment allows specific clients who were enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP) and who were identified by FHIAP and will lose their FHIAP subsidy after May 31, 2008 to move to OHP Standard, waiving the requirement for OHP Standard of six months without insurance. This amendment will also allow individuals who are transitioning from another Medicaid program to OHP Standard or who have been determined eligible for OHP Standard after receiving an OHP 7210R reservation list application to waive the requirement of six months without insurance requirement if FHIAP subsidized the individual's private health insurance premium.

OAR 461-135-1102 about the effective dates for the Oregon Health Plan (OHP-OPU) (usually referred to as OHP Standard) is being amended to restate the Department's policy about who is considered a new applicant for the OHP-OPU program. This rule is being amended to allow clients who were enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP) to move to OHP Standard on June 1, 2008, upon notification from FHIAP that their FHIAP subsidy will end after May 31, 2008. This rule is also being amended to make permanent a temporary rule amended January 28, 2008 and to state that the program is open to new applicants who qualify under OAR 461-135-1125 (the reservation list process). OHP Standard has been closed to some new enrollees since June 30, 2004.

OAR 461-135-1110 about eligible and ineligible students in the OHP-OPU program (Oregon Health Plan coverage for adults who qualify under the 100 percent income standard) is being amended to update the expected contribution level that makes some students ineligible for OHP. OHP Standard eligibility for full time higher education students includes a provision that the OHP Standard applicant must be eligible for a Pell Grant or have a Pell Grant Expected Family Contribution (EFC) less than the federal maximum established by the U.S. Department of Education. This rule is being amended to show the federal maximum for the 2008-2009 school year. The EFC maximum amount for an OHP Standard applicant must be less than \$4,042 for the 2008-2009 school year, a decrease from the 2007-2008 school year maximum of \$4,111.

OAR 461-135-1125 about the reservation list and eligibility for the OPU category of the Oregon Health plan (OHP-OPU or OHP Standard) is being adopted in order to make permanent a temporary rule adopted January 28, 2008 and later amended, and to reopen OHP-OPU to a limited number of new applicants, by specifying the Department's procedures for placing individuals on and selecting individuals from a reservation list. A reservation is a list of individuals who may be considered for the OHP-OPU program as a new applicant at such times as the Department determines that new applicants may be added to the program. The list would be used to manage enrollment of new applicants into the program within the limits of program authority and funding.

OAR 461-135-1175 about the Department's Senior Farm Direct Nutrition Program (SFDNP) is being amended to comply with clarifications received from the United States Department of Agriculture, Food and Nutrition Service by restating the eligibility criteria for SFDNP. OAR 461-135-1175 is being amended to provide that in order to be eligible for SFDNP, the Department must receive the client's letter of interest no later than September 30 of any given year.

OAR 461-140-0010 about the availability of assets in the Department's public assistance, medical and food stamp programs is being amended to restate the Department's policy regarding when an asset may be excluded by specifying that an excluded asset remains

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excluded only while being used in the manner consistent with the rule that provided the exclusion.

OAR 461-140-0040 about the availability of income in the Department's public assistance, medical and food stamp programs is being amended to resolve an inconsistency in the Department's rule and make the Department's rule consistent with the Department's policy manual and practice by adding QMB to this list of programs where moneys withheld from or returned to the source of the income to repay an overpayment from that source are countable, even if the client does not receive the income.

OAR 461-140-0220 about determining whether a transfer of an asset is disqualifying in the Department's public assistance, medical and food stamp programs is being amended to restate the Department's policy on which transfers are disqualifying by adding a cross-reference to OAR 461-145-0390 about personal belongings. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-140-0242 about disqualifying transfers of assets in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to change the definition of a child for the purposes of determining whether a transfer of assets is disqualifying in the GA, GAM, OSIP and OSIPM programs. Previously, the definition included a step child. The rule is being amended so that the definition only includes natural or adoptive children under age 21, or children of any age who have been determined to meet the Department's blindness or disability criteria. This rule is also being amended to clarify current policy regarding transfers to children who meet Social Security Administration criteria for blindness or disability and to clarify that the definition of "child" in OAR 461-001-0000 does not apply to this rule.

OAR 461-145-0020 and OAR 461-145-0022 provide for the treatment of annuities in all Department programs. The rules are being amended for the Oregon Supplemental Income Program (OSIP — assistance to the elderly and persons with disabilities), OSIP-Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs, to state that when monthly payments from annuities are counted as unearned income, the income is attributed to the payee. These rules are also being amended to state that qualifying annuities must be actuarially sound by paying out over a period of time within three months of the actuarial life expectancy of the annuitant. The current version of these rules attributes the unearned income to the annuitant, and states that the annuity must pay out "within" the actuarial life expectancy of the annuitant. In addition, OAR 461-145-0022 is being amended to restate the Department's policy on how to treat annuities purchased before January 1, 2006.

OAR 461-145-0080 is being amended to clarify how child support and cash medical support is counted for on-going eligibility and benefit determination for TANF clients in the State Family Pre-SSI/SSDI Program (SFPSS) and for TANF clients for whom deprivation is based on the unemployment or underemployment of both parents.

OAR 461-145-0090 about the consideration of income from disability insurance benefits in the Department's public assistance, medical and food stamp programs is being amended to align the policy with federal law as provided in 20 CFR 416.1110, 20 CFR 404.1051 and POMS SI 00820.005 by stating how disability payments are treated in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries, (QMB) programs. This rule is being amended to state that for OSIP, OSIPM, and QMB, disability insurance payments can be counted as earned income if the income is received within six months of stopping work and the employer has contributed to the insurance.

OAR 461-145-0261 about the treatment of Individual Development Accounts in the Department's public assistance, medical and food stamp programs is being adopted to state the Department's policy on the treatment of Individual Development Accounts.

OAR 461-145-0310 is about the treatment of life estates in real property in the Department's public assistance, medical and food

stamp programs. This rule is being amended to clarify the Department's policy and make the Department's policy consistent with the Department's practice regarding the treatment of life estates in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. OAR 461-145-0310 is being amended to clarify the treatment of life estates that are not disqualifying in the OSIP, OSIPM, and QMB programs. The rule is also being amended to specify the circumstances under which the value of a life estate may be considered unavailable. For the QMB program only, the rule is being amended to reflect current policy regarding the transfer of assets for less than fair market value. QMB is being removed from the programs affected by transfers for less than fair market value.

OARs 461-145-0490 about the treatment of Social Security benefits in the Department's public assistance, medical and food stamp programs and OAR 461-145-0510 about the treatment of SSI in the Department's public assistance, medical and food stamp programs are being amended to make the Department's policy consistent with its practice and consistent with federal policy by adding Qualified Medicare Beneficiaries (QMB) to the programs for which SSI and SSB lump-sum payments are not counted for a nine-month time-frame. QMB was inadvertently left out of the section of rule that directed the exclusion.

OAR 461-145-0560 is about the treatment reimbursements from the Federal Uniform Relocation Assistance Act and the Real Property Acquisition Policies Act of 1970 in the Department's public assistance, medical and food stamp programs. This rule is being amended to restate the Department's policy regarding the treatment reimbursements from the Federal Uniform Relocation Assistance Act and the Real Property Acquisition Policies Act of 1970. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-145-0582 is about the treatment of victims' assistance payments in the Department's public assistance, medical and food stamp programs. This rule is being amended to restate the Department's policy for treatment of certain victim assistance programs in the General Assistance (GA) and General Assistance Medical (GAM) programs. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-155-0180 is about the poverty related income standards for the Department's programs that use a monthly income standard based on the federal poverty level and OAR 461-155-0235 is about the premium standards for the Oregon Health Plan standard (OHP-OPU). These rules are being amended to reflect the annual increase in the federal poverty guidelines and to make permanent temporary rules amended January 24, 2008. The Department converts the annual poverty guidelines published in the Federal Register to a monthly, rounded amount and uses the result to determine the new income limits and amount of premium billed for each OHP Standard client who is required to pay a monthly premium. Some OHP Standard clients are exempt from the premium requirement.

OAR 461-155-0250 about the income and payment standards in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to make permanent a temporary rule amendment updating adjusted earned income limits for the Employed Persons with Disabilities (EPD) program as a result of the 2008 Federal Poverty Level amounts.

OAR 461-155-0270 about the maintenance standard for room and board and personal needs for the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program is being amended to restate the Department's policy regarding the maintenance standard and make the Department's policy consistent with agency practice by adding the room and board standard and personal needs standard for children under the age 18. This rule is also being amended to replace old terminology with new

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terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-155-0500 is the overview rule about special needs payments in the General Assistance (GA), General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Aid for Needy Families (TANF) programs. This rule is being amended to delete references to the special needs covered by the repealed rules (OAR 461-155-0650 and OAR 461-155-0690). This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-155-0650 and OAR 461-155-0690 are about the Oregon Supplemental Income Program (OSIP, aid to the elderly and people with disabilities), OSIP-Medical (OSIPM), General Assistance (currently closed), and GA-Medical (currently closed) programs, and provide for special needs payments under certain circumstances. OAR 461-155-0650 provides for payments when a client purchases meals and shelter when the provider offers no other services. OAR 461-155-0690 provides for payments when the client is looking for work or has a bona fide job interview. Both of these rules are being repealed because there are no longer any OSIP, OSIPM, GA, or GAM clients who meet the circumstances and have these needs, and who are receiving payments under these rules.

OAR 461-160-0010 about how resources are used to determine financial eligibility in the Department's public assistance, medical and food stamp programs is being amended to align it with federal policy and state how to treat resources when a child is applying for benefits by adding provisions that state which assets of an adult may be deemed available to children. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-160-0550 about income deductions in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) for clients who do not receive SSI, do not receive Title XIX waived services and who live in the community is being amended to specify that this rule applies when there are no children in the household and to clarify deductions and deeming for adults and children in the OSIP and OSIPM programs.

OAR 461-160-0551 about income deductions in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) for clients who do not receive SSI, do not receive Title XIX waived services and who live in the community is being adopted to specify that this rule applies when there are children in the household and to clarify deductions and deeming for adults and children in the OSIP and OSIPM programs.

OAR 461-160-0620 about income deductions and client liability for long-term care and waived services is being amended to make a required, annual adjustment to the income protection requirements for Oregon Supplemental Income Program Medical (OSIPM) program, offered to married couples when one spouse remains at home and the other receives long-term care or community-based waived services. The amount of protection is based on the federal poverty guidelines for a two-person household. This increase will apply to the minimum income allowance (150 percent of the federal poverty guidelines for a couple) and the monthly housing allowance amount (30 percent of the minimum income allowance). This rule is also being amended to correct the term "gross income" to "countable income", because countable income is the term used and defined in Department rules.

OAR 461-160-0800 is about determining the participant fee in the Oregon Supplemental Income Program Employed Persons with Disabilities program (OSIP-EPD) and Oregon Supplemental Income Program Medical Employed Persons with Disabilities program (OSIPM-EPD). OAR 461-160-0810 is about determining cost share and room and board payments for OSIPM-EPD clients residing in a community-based care facility. OAR 461-160-0820 is about determining cost share for OSIPM-EPD clients residing in a nursing facil-

ity. OAR 461-160-0850 is about determining the post-eligibility premium for clients in the OSIP-EPD and OSIPM-EPD programs. OAR 461-160-0800 is being amended and OAR 461-160-0810, 461-160-0820, and 461-160-0850 are being repealed to eliminate the current cost share/premium calculation for the OSIP-EPD and OSIPM-EPD programs and create a four-tiered participant fee structure based on the OSIP-EPD and OSIPM-EPD participant's combined earned and unearned income.

OAR 461-175-0200 about notice requirements in the Department's public assistance, medical and food stamp programs is being amended to include notice requirements to support the Multnomah County and Deschutes County Pre-natal CAWEM Expansion Pilot Program. Citizen/Alien Waived Emergent Medical (CAWEM) benefits are limited to emergent medical needs. The Pre-natal CAWEM Expansion Pilot Program provides pre-natal benefits under an amendment to Oregon's State Children's Health Insurance Program (SCHIP) to pregnant women who would not otherwise receive pre-natal medical benefits under CAWEM. Adding the approval notice situation for pilot participants will allow the Department to notify the pregnant CAWEM Medicaid recipient that the pre-natal SCHIP benefits provided under the pilot will end when the pregnancy ends and that she will be eligible for CAWEM Medicaid benefits after the pregnancy ends.

OAR 461-180-0040 about the effective date for changes in special and service needs is being amended to clarify the Department's policy and make the Department's policy consistent with the Department's practice regarding effective dates for services and special needs.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000

Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

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(C) Dependent care assistance plans; and
(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means a caretaker who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the dependent child:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of caretaker relative under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(14) "Certification period" means the period for which a client is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(20) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(21) "Department" means the Department of Human Services (DHS).

(22) "Dependent child", in the EXT, MAA, MAF, REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(23) "Disability" means:

(a) In the FS program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(24) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(25) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(26) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(27) "Equity value" means fair market value minus encumbrances.

(28) "Fair market value" means the amount an item is worth on the open market.

(29) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(30) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(31) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(32) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(33) "Income producing property" means any real or personal property that generates income for the financial group. Examples of income producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(34) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(e) For clients in the GA, GAM, OSIP, and OSIPM programs who live in a nonstandard living arrangement, for the purposes of calculating the cor-

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rect divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(35) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(36) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(37) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers their ownership to another while retaining, for the rest of their life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(38) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(39) "Long term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(40) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(41) "Marriage" means the union of a man and a woman who are legally married.

(42) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(43) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(44) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care Facilities.

(C) Drug or Alcohol Residential Treatment Facilities.

(D) Homeless or Domestic Violence Shelters.

(E) Lodging house if paying for room and board.

(F) Correctional facilities.

(G) Medical institutions.

(45) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(46) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

(47) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(48) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(49) "Periodic income" means income received on a regular basis less often than monthly.

(50) "Primary person" for all programs except FS, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF, and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For FS, see OAR 461-001-0015.

(d) For GA, GAM, OSIP, OSIPM, and QMB, the client or their spouse.

(e) For OHP, REF, and REFM, the applicant, caretaker, caretaker relative or parent.

(51) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(52) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(53) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(54) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(55) "Shelter costs" mean, in all programs except the Food Stamp program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the Food Stamp program, see OAR 461-160-0420.

(56) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. Shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park or bus station.

(57) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(58) "Spousal support" means income paid (voluntarily, per court order or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(59) "Spouse" means an individual who is legally married to another individual. In the ERDC and FS programs, spouse includes an individual who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors or tradespeople; and

(b) Sharing living expenses or household duties.

(60) "Stable income" means income that is the same amount each time it is received.

(61) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(62) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(63) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(64) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(65) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

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(66) “Variable income” means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.049, 414.042
Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-025-0310

Hearing Requests

(1) A claimant (see OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) Except as provided in subsection (o) of this section, the Department has not approved or denied a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for food stamps — within 30 days of the filing date.

(B) An application for a JOBS support service payment — within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend food stamp benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client’s need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of food stamps was an overissuance.

(e) The claimant claims that the Department previously underissued public assistance or food stamps and the Department denies the claim.

(f) The household disputes its current level of food stamp benefits.

(g) The filing group (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the Food Stamp program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client’s premium for the Oregon Health Plan.

(j) In the Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).

(k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of Nursing Home services, Home and Community Based Waivered Services (defined at OAR 411-015-0005), Spousal Pay services (see OAR 411-030-0080), or Independent Choices services (see OAR Division 411-036).

(m) The claimant’s benefits are changed to vendor, protective, or two-party payments.

(n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.

(o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.

(p) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department’s rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department’s re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.

(3) A request for hearing is complete:

(a) In public assistance programs, when the Department’s Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant’s representative and is received by the Department.

(b) In the Food Stamp program when:

(A) The Department receives the claimant’s oral or written statement that he or she wishes to appeal a decision affecting the claimant’s food stamp benefits to a higher authority; or

(B) The Department’s Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant’s representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(4) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(5) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(6) To be timely, a completed hearing request must be received by the Department not later than:

(a) Except as provided in subsection (b) of this section, the 45th day following the date of the decision notice (see OAR 461-001-0000) in public assistance and medical programs.

(b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).

(c) The 90th day following the date of the decision notice in the Food Stamp program, except:

(A) A filing group may submit a hearing request at any time within a certification period (see OAR 461-001-0000) to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.

(d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(7) In determining timeliness under section (6) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

(9) In the REF and REFM programs, a client is not eligible for a contested case hearing when assistance is terminated because the eligibility time period imposed by OAR 461-135-0900 has been reached. If the issue is the date of entry into the United States the Department provides for prompt resolution of the issue by inspection of the individual’s documentation issued by the US Citizenship and Immigration Services (USCIS) or by information obtained from USCIS, rather than by contested case hearing.

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

Stat. Auth.: ORS 411.060, 411.816, 411.892, 414.042
Stats. Implemented: ORS 411.060, 411.095, 411.117, 411.816, 411.892, 412.009, 412.049, 412.069, 414.042, 414.055
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; 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 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-025-0311

Continuation of Benefits

(1) This rule explains who may receive continuing benefits while a contested case pending.

(2) A client who is entitled to either a continuing benefit decision notice under a rule in division 175 of this chapter of rules or a mass change notice that provides an option for continuing benefits may, at the option of the client, receive continuing benefits, in the same manner and same amount, until a final order resolves the contested case. To be entitled to continuing benefits, the client must complete a hearing request not later than the later of:

(a) The tenth day following the date of the notice; and

(b) The effective date of the action proposed in the notice.

(3) The continuing benefits are subject to modification based on additional changes affecting the client’s eligibility or level of benefits.

(4) In determining timeliness under section (2) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(5) Individuals in REF and REFM are not entitled to continuing benefits when the issue in question is regarding the termination of benefits because the eligibility time period imposed by OAR 461-135-0900 has been reached.

Stat. Auth.: ORS 411.060, 411.816, 411.892, 414.042

ADMINISTRATIVE RULES

Stats. Implemented: ORS 411.060, 411.095, 411.117, 411.816, 411.892, 412.009, 412.049, 412.069, 414.042, 414.055
Hist.: AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 28-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08

461-025-0375

Final Order; Timeliness and Effective Date

- (1) A Final Order will be issued or the case otherwise resolved:
 - (a) In public assistance cases not later than 90 days following the request for hearing;
 - (b) In cases involving only the Food Stamp program not later than 60 days following the request for hearing; and
 - (c) In IPV cases within 90 days of the date the claimant was notified in writing that a hearing had been scheduled.
- (2) Delay due to a postponement or continuance granted at claimant's request shall not be counted in computing the time limits specified in section (1) of this rule.
- (3) The final order is effective immediately upon being signed or as otherwise provided in the order.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; SSP 17-2008, f. & cert. ef. 7-1-08

461-110-0410

Filing Group; OSIP, OSIPM, QMB

- (1) In the OSIP and OSIPM programs (except OSIP-EPD, 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 applicants and the spouse (see OAR 461-001-0000) of an applicant.
 - (b) For applicants who are children (see OAR 461-001-0000) living in a standard living arrangement and are not assumed eligible, the filing group consists of applicants and each parent (see OAR 461-001-0000) of these applicants.
- (2) In the OSIP and OSIPM programs (except OSIP-EPD, 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 OSIP-EPD, 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 applicants and the following household members:
 - (a) The spouse of an applicant.
 - (b) Each parent of children, if the children are applying and are not assumed eligible.
 - (c) Children of the applicant, if the applicant wants to include these children in the need group (see OAR 461-110-0630).

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

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

461-110-0530

Financial Group

- (1) Except as provided in section (4) of this rule, a *financial group* refers to the filing group members whose income and resources count in determining eligibility and benefits.
- (2) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF 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 who chooses not to be included in the need group (see OAR 461-110-0630); and
 - (b) Individuals who receive SSI benefits.
- (3) In the OHP program, 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 OSIP and OSIPM programs:
 - (a) When individuals live in a standard living arrangement (see OAR 461-001-0000), all members of the filing group are in the financial group.
 - (b) When individuals live 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) For all programs other than EXT, MAA, MAF, OHP, OSIP, OSIPM, REF, REFM, SAC, and TANF, the financial group consists of all the individuals in the filing group.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049, 414.042

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

461-110-0630

Need Group

- (1) The need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.
- (2) In the EA, REF, and REFM programs, the need group consists of the members of the *financial group* (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.
- (3) In the ERDC, OSIP-EPD, OSIPM-EPD, QMB, and SAC programs, the need group consists of each member of the financial group.
- (4) In the EXT program, the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.
- (5) In the FS program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following people are not in the need group:
 - (a) A member disqualified for an intentional program violation.
 - (b) A fleeing felon under OAR 461-135-0560.
 - (c) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.
 - (6) In the GA and GAM programs, the need group consists of each member of the financial group except that the following individuals may not be in the need group:
 - (a) A fleeing felon under OAR 461-135-0560.
 - (b) An individual in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.
 - (c) An individual not complying with social security number requirements under OAR 461-120-0210.
 - (7) In the MAA and TANF programs, the need group is formed as follows:
 - (a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705.
 - (b) The need group cannot include:
 - (A) A parent who is in foster care and for whom foster care payments are being made.
 - (B) An unborn child.
 - (C) In the TANF program:
 - (i) An individual who cannot be in the need group because of a disqualification penalty.
 - (ii) An individual who cannot be in the need group because the individual has exceeded the 60-month time limit and does not meet any of the exceptions listed in OAR 461-135-0075.
 - (iii) A fleeing felon under OAR 461-135-0560.
 - (iv) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.
 - (8) In the MAF program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizen and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705, except for the following individuals:
 - (a) A parent who is in foster care and for whom foster care payments are being made.
 - (b) The father of an unborn child who has no eligible dependent children.
 - (9) In the OHP program:
 - (a) An unborn child of a pregnant female is included in the need group.
 - (b) The need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.
 - (10) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs:

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(a) For purposes of this section an ineligible spouse is a spouse who is not eligible to receive either SSI or TANF benefits.

(b) If an individual adult is applying, there is a need group of one.

(c) If an adult is applying, there is deeming (see OAR 461-160-0551), and after deeming, the remaining income of the ineligible spouse of the adult is:

(A) Less than the difference between the SSI standard for two individuals and the SSI standard for one individual, then the need group consists of the adult who is applying.

(B) More than the difference between the SSI standard for two individuals and the SSI standard for one individual, then the need group consists of the adult who is applying and his or her spouse.

(d) If a child is applying, the need group consists of the child.

(e) In all other situations, the need group consists of all members of the financial group.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

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

461-115-0030

Date of Request

(1) For all programs covered by Chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The *date of request* is one of the following:

(a) In the EA, ERDC-BAS, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the date of request is the day the request for benefits is received by the Department.

(b) In the ERDC-SBG program, the date of request is the date the Department sends the client a notice of the right to apply, along with an application.

(c) In the FS program, this section does not apply. See OAR 461-115-0040.

(d) In the GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, the date of request is determined as follows:

(A) For a new applicant,

(i) The day the request for medical benefits is received by a Department representative, except as described in subparagraph (ii) of this paragraph.

(ii) If the request for medical benefits is received by a Department representative no later than the next business day after medical services are received, the date of request is the day these medical services were received.

(B) For a current recipient, the date of request is one of the following:

(i) The date the client reports a change requiring a redetermination of eligibility.

(ii) The date the Department initiates a review, except that the automatic mailing of an application does not constitute a Department-initiated review.

(iii) The date the client establishes a date of request by contacting the Department orally or in writing or by submitting an application.

(C) For an OHP Standard Reservation List Applicant (see OAR 461-135-1125), the *date of request* is the date the Department mails the OHP 7210R Application (see OAR 461-135-1125).

(e) In the SFPSS program:

(A) Except as provided in paragraph (B) of this subsection, the date of request is the day the client signs the program's Interim Assistance Agreement.

(B) The date of request for support service payments is the day the request for benefits is received by the Department.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; 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 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 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-115-0050

When an Application Must Be Filed

A client must file an application, or may amend an application already complete, as a prerequisite to receiving benefits as follows:

(1) A client may apply for the TA-DVS program as provided in OAR 461-135-1220.

(2) In all programs other than the TA-DVS program:

(a) Except as provided in sections (3), (4), (5), and (6) of this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(b) An application is complete if all of the following requirements are met:

(A) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for all individuals in the filing group.

(B) The applicant, even if homeless, provides a mailing address.

(C) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(D) The application is received by the Department.

(3) A new application is not required in the following situations:

(a) In the Food Stamp program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the filing group eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), in accordance with OAR 461-180-0080.

(b) In all programs except the Food Stamp program, when a single application can be used both to determine a client is ineligible on the date of request (see OAR 461-115-0030) and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461 135 0950.

(4) A new application is required to add a newborn child to a benefit group (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to the benefit group of the child's mother. The child may be added to a benefit group other than the benefit group of the child's mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and FS programs, an application is not required to add the child to the benefit group.

(d) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, and TANF, an application is required.

(5) Except for OHP-OPU applicants who must use the OHP 7210R Application (see OAR 461-135-1125), a new application is required to add an individual to a benefit group, other than a newborn child, according to the following requirements:

(a) In the ERDC and FS programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF, a new application is required.

(6) Clients whose TANF grant is closing may request ERDC orally or in writing.

(7) For all programs except the EXT, FS, MAA, MAF, and OHP programs, clients may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes a verbal or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) Except for OHP-OPU applicants who must use the OHP 7210R Application (see OAR 461-135-1125), a new application is not required in

ADMINISTRATIVE RULES

the EXT, MAA, MAF, and OHP programs to redetermine eligibility for the same program or to change between these programs if the following conditions are met:

(a) The client is currently receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 414.042, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049

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 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; 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 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; 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 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 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; 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 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-115-0651

Required Verification and When to Verify; FS

(1) The Department must give households at least 10 days to provide required verification.

(2) All of the following information must be verified when a client initially applies for food stamp benefits:

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Alien status.

(c) Social Security Number (SSN) or application for an SSN.

(d) Countable income.

(e) Medical expenses, if they are used as a deduction.

(f) An order to pay child support and the amount actually paid.

(g) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(3) All of the following information must be verified when a client reapplies for food stamp benefits:

(a) Countable income.

(b) Previously unreported medical expenses, and recurring medical expenses which have changed by more than \$25.

(c) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(d) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(4) For cases using the Change Reporting System (CRS) and the Monthly Reporting System (MRS), the following changes reported during the certification period must be verified:

(a) For CRS, a change in source of income, or the amount of stable income has changed by more than \$50.

(b) For CRS, the amount of variable income from any source.

(c) Changes in reported medical expenses by more than \$25, and previously unreported medical expenses.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(5) For cases using the Simplified Reporting System (SRS), each of the following changes reported during the certification period must be verified in accordance with OAR 461-170-0103:

(a) Alien status and SSN or application for an SSN when a new member joins the benefit group.

(b) Countable income.

(c) Medical expenses, if used as a deduction.

(d) An order to pay child support and the amount actually paid, if used as a deduction.

(6) A claimed expense or cost may be used to determine the food stamp benefit only when the client provides the required or requested verification.

(7) In addition to the verification required by sections (2) to (5) of this rule, the income for a client must be verified:

(a) Each month for a client in MRS.

(b) Every six months for SRS cases certified for twelve months, except those in which every member of the filing group is elderly or an indi-

vidual with a disability (see OAR 461-001-0015) and has no earned income (NED).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

461-120-0120

Alien Status; REF, REFM

In the REF and REFM programs, an individual meets the alien status requirements if the individual is admitted lawfully under any of the following provisions of law:

(1) An individual admitted as a refugee under section 207 of the INA (8 U.S.C. 1157).

(2) An individual granted asylum under section 208 of the INA (8 U.S.C. 1158).

(3) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.

(4) An individual paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)). For purposes of this section, "Lautenberg" parolees, humanitarian interest parolees, and other public interest parolees do not qualify.

(5) An Amerasian from Vietnam who is admitted to the U.S. as an immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).

(6) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(7) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(8) Iraqi and Afghan aliens granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 11-2002(Temp), f. & cert. ef. 10-1-02 thru 12-31-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 3-3008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-120-0125

Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp programCa battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp programCa non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent=s family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

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(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(e) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(f) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(4) In the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Was a qualified non-citizen before August 22, 1996.

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days.

(c) Is an individual granted any of the following alien statuses:

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program, is receiving SSI benefits.

(f) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified noncitizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(c) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(d) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(e) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(6) In the OSIP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified noncitizen.

(b) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) An individual receiving SSI benefits.

(e) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(f) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

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(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(g) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(7) In all programs except ERDC and TANF, a qualified non citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. ' 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (3)(e), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statusesC

(A) RefugeeCunder section 207 of the INA.

(B) AsylumCunder section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106 386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2008, even if the eight month limit has not been reached.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2008, even if the six month limit has not been reached.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means tested benefit during the quarter. Federal means tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; 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 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; 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 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-120-0330

Requirement to Pursue Assets

(1) For all programs, except ERDC and FS, clients must make a good faith effort to obtain any asset (other than support and medical coverage, which are covered in OAR 461-120-0340 and 461-120-0345, respectively) to which they have a legal right or claim, except as follows:

(a) A parent or caretaker relative who is exempt from participation in the JOBS program (except primary wage earners who are exempt due to remoteness as provided by OAR 461-130-0310(1)) is not required to apply for unemployment insurance benefits.

(b) Except as specified by law, a client applying for or receiving any program benefits from the Department is not required to apply for other programs it administers or for supplemental security income (SSI).

(c) A person applying for EA is required to use an asset only if the asset can be made available in time to meet the emergent need.

(d) Clients are not required to borrow money.

(e) Individuals are not required to make a good faith effort to obtain any asset if the individual can show good cause for not doing so. Good cause means a circumstance beyond the ability of the individual to control.

(2) In all programs except ERDC, FS, and medical assistance programs:

(a) The effect of failing to comply with this rule is that everyone in the filing group is ineligible. In addition, when a cash payment ends due to this penalty, eligibility for and the level of food stamp benefits are determined as if the client were receiving benefits without the effects of this rule.

(b) The penalty provided by section (2)(a) of this rule is effective until all members of the filing group comply with the requirements of section (1) of this rule.

(3) In medical assistance programs:

(a) A person is ineligible for benefits if he or she fails to comply with the requirements of this rule.

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(b) The penalty provided by section (3)(a) of this rule is effective until the person complies with the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 17-2008, f. & cert. ef. 7-1-08

461-120-0510

Age Requirements for Clients to Receive Benefits

(1) If the year of a person's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the BCCM program, a woman must be under 65 years of age.

(3) To be eligible for the EXT, MAA, MAF, or TANF programs:

(a) A child (see OAR 461-001-0000) must be:

(A) Under 18 years of age; or

(B) Under 19 years of age and regularly attending school full time, as determined by the school.

(b) A caretaker relative may be any age.

(4) To be eligible for payment of child care costs for the ERDC or TANF program, a child must be:

(a) Under 12 years of age for the ERDC program or under 13 years of age for the TANF program; or

(b) Under 18 years of age and:

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(5) To be eligible for the FS, OSIP-AB, OSIPM-AB, QMB-BAS, QMB-SMB, or REFM programs, a client may be any age.

(6) To be eligible for the GA and GAM programs, a client must be:

(a) Eighteen years of age or older and less than 65 years of age; or

(b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

(7) To be eligible for the OHP program, a client must meet the age requirements in OAR 461-135-1100.

(8) To be eligible for the OSIP-AD (except OSIP-EPD) program, a client must be 18 years of age or older and under 65 years of age.

(9) To be eligible for the OSIP-EPD and OSIPM-EPD programs, the client must be 18 years of age or older or be legally emancipated.

(10) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(11) To be eligible for the OSIPM-AD (except OSIPM-EPD) or QMB-DW programs, a client must be under 65 years of age.

(12) To be eligible for the REF program, a client must be 18 years of age or older or must be emancipated.

(13) To be eligible for the SAC program, the child must be under 21 years of age.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

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 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; 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 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; 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 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 17-2008, f. & cert. ef. 7-1-08

461-130-0325

Participation Requirements; FS, REF, TANF

In the Food Stamp, REF, and TANF programs:

(1) A mandatory (see OAR 461-130-0310) client selected by the Department to participate in an employment program of the Food Stamp, REF, or TANF program must do all the following:

(a) Accept a bona fide offer of employment, whether temporary, permanent, full time, part time, or seasonal.

(b) Maintain employment.

(A) In the Food Stamp program, a client fails to maintain employment by:

(i) Voluntarily leaving a job 30 days or less prior to the date of application for food stamps or at any time thereafter,

(ii) Being dismissed for striking while a federal, state or county employee, or

(iii) Reducing hours of work to less than 30 each week.

(B) Paragraph (A) of this subsection applies only if the client is required to register for work, or is exempt from work registration due to employment according to OAR 461-130-0310(2)(a)(A), has a job that averages not less than 30 hours each week or has provided average weekly earnings not less than the federal minimum wage multiplied by 30 hours and quits the job, or quits working under a JOBS Plus agreement more than twice (see OAR 461-190-0426). Changes in employment status caused by an employer reducing work hours, being fired from a job, terminating a self employment enterprise, or resigning from a job at the demand of the employer do not constitute a failure to maintain employment.

(C) In the REF and TANF programs, a client fails to maintain employment when:

(i) The client has been or would be found to have quit work without good cause (OAR 461-130-0327) or to have been discharged for misconduct in accordance with the unemployment insurance compensation law of Oregon.

(ii) The client voluntarily reduces earnings or hours of employment or does not accept an increase in hours worked that would result in increased earnings.

(c) Schedule and keep required employment-related appointments and interviews.

(d) Notify the Department's case manager or the JOBS contractor of the reason for not keeping employment-related appointments and interviews, not attending scheduled classes and activities, or not completing case management activities. Notification must be made within three working days from the date of a missed appointment, interview, class, or activity.

(e) Provide the Department, in a manner as required, with verifiable documentation of JOBS participation hours, including paid work, job search, and educational participation hours.

(f) In the Food Stamp program, complete all work activities and components specified on the case plan (see OAR 461-001-0020).

(g) In the REF and TANF programs, complete all case management assignments specified on the case plan (see OAR 461-001-0025) or other similar plans approved by the Department.

(2) For clients receiving food stamps, a household containing a client who was exempt from participation in employment programs only by OAR 461-130-0310(2)(a)(F) or (G), but not any other provision, and who fails to comply with a requirement of the TANF or unemployment compensation program that is comparable to a requirement of an employment program of the Food Stamp program, must be treated as though the client had failed to comply with the corresponding requirement of the Food Stamp program employment program. If the client fails to comply with a requirement that is not comparable, the client loses the exemption authorized by OAR 461-130-0310(2)(a)(F) or (G) and must comply with the requirements of the Food Stamp program employment programs.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 411.825, 412.006, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-0010

Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) Except for a client in a two-parent family for which deprivation is based on unemployment or underemployment of the primary wage earner; a client disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345; a client who does not meet the citizenship and alien status requirements set forth in OAR 461-120-0110; and a client who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following individuals are assumed eligible for MAA:

(a) A client receiving or eligible to receive TANF cash benefits.

(b) A client whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) A client who receives no TANF cash benefits because of failure by the client to comply with the requirements for a recipient of the JOBS program, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) A client in the Pre-TANF program (see OAR 461-135-0475).

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(e) A child in a benefit group (see OAR 461-110-0750) whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(3) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A pregnant woman who was eligible for and receiving benefits of the EXT, GAM, MAA, MAF, OHP-OPP, OSIPM, or SAC program but becomes ineligible during the pregnancy is assumed eligible for Medicaid.

(5) A child (see OAR 461-001-0000) born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC benefits is assumed eligible for medical benefits. A child who is continuously a member of the household group of his or her mother is eligible under this section until the end of the month the child turns one year of age.

(6) Except for a child who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(7) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c) or (d) of this section applies:

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable resources exceed the limit after performing the calculation under OAR 461-160-0580.

(8) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB BAS program.

(9) A client is assumed eligible for REFM if:

(a) The client is receiving cash assistance through the REF program;

(b) The client loses eligibility for cash assistance through the REF program only because of income or resources;

(c) The client loses eligibility for the EXT, MAA, MAF, or SAC programs, but still meets the requirements of the REFM program; or

(d) The client had refugee-related medical assistance established in another state based on refugee status granted by the United States Citizenship and Immigration Services, and moved to Oregon within the client's first eight months in the United States.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 412.049, 414.025, 414.042, 1999 Or. Laws ch. 859

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-0082

Eligibility for Refugees

(1) Clients are eligible for the Refugee Case Services Program if they:

(a) Have an alien status listed in OAR 461-120-0120;

(b) Entered the United States on or after October 1, 1997;

(c) Live in Clackamas, Multnomah or Washington county;

(d) With the exception of Afghan special immigrants, have resided in the United States less than eight months or have been granted asylum within the last eight months. The month in which the refugee was admitted to the United States as a refugee, or was granted asylum, counts as the first month. Afghan special immigrants must have resided in the United States for six months or less. The month in which the special immigrant was admitted to the United States as a special immigrant counts as the first

month. If a special immigrant was granted special immigrant status after having already entered the United States, then the month that the status was granted counts as the first month;

(e) Meet the eligibility requirements contained in OAR 461-193-0000 through 461-193-1380.

(2) Clients who are eligible for the Refugee Case Services program are not eligible for TANF.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-0400

Specific Requirements; ERDC

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. To be eligible for ERDC, a filing group (see OAR 461-110-0350) must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program:

(a) At least one caretaker (see OAR 461-001-0000) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months; and

(b) A child who needs child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(2) In the ERDC SBG program:

(a) At least one caretaker must be an undergraduate student without a bachelor's degree. The student must have been admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and must be registered for at least twelve quarter hours — or an equivalent number of credit hours in an institution that does not use the quarter system — that count toward graduation.

(b) In addition to meeting the requirements of subsection (a) of this section, a student who applies for the ERDC-SBG program on or after July 1, 2005 must have been admitted to a two- or four-year non-profit, generally accredited institution of higher education located in Oregon, including community colleges, that is eligible for federal financial aid.

(c) A caretaker who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per or two semesters each academic year; or

(B) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion required by paragraph (A) of this subsection.

(d) A student may use ERDC SBG benefits for child care needed in order to work during an absence from school or to attend school during a term in which the student is attending school less than 12 credit hours if:

(A) The student intends to attend school at least 12 credit hours the following term; and

(B) The absence or part time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) The summer break period for students in the semester system.

(iii) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion allowed by subparagraph (i) or (ii) of this paragraph.

(e) Students must maintain good standing according to the standards of the institution they are attending.

(f) Students must complete at least 36 quarter hours — or the equivalent in an institution that does not use the quarter system — that count toward graduation each academic year.

(g) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461 160 0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the 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 care while participating in requirements of a case plan (see OAR 461-001-0025) other than requirements associated with post-secondary education. In the ERDC-SBG program only, the unemployed adult meets the requirements of section (2) of this rule.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461 165 0160 and 461 165 0180.

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(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the caretaker to remain employed.

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 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

461-135-0570

Eligible and Ineligible Students; FS

(1) For the purposes of this rule, higher education includes the following:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(2) A person 18 years of age or older, but under the age of 50 years, who is enrolled at least half time in higher education is ineligible to receive FS benefits, unless one of the following is true:

(a) The student is:

(A) A paid employee working an average of 20 hours or more per week; or

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is participating in a state or federally funded work-study program and expects to actually perform work in a work-study job in the current term or semester. The period of eligibility for a student eligible because of this sub-section:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the filing group, and the child is:

(A) Under six years of age; or

(B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the employment requirements of sub-section (a) of this section or the work-study requirements of sub-section (b) of this section.

(d) The student is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF benefit group.

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes under the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974, 19 U.S.C. 2296.

(i) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(j) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by their disenrolling), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

(4) A student residing in a dormitory or other living situation with meal plans is ineligible for Food Stamp benefits.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 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 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-0750

Eligibility for Individuals in Long-Term Care or Waivered Services; OSIPM

An individual who meets the requirements of all of the following sections is eligible for OSIPM:

(1) Meets the eligibility requirements for the OSIPM program except that income is above the OSIPM adjusted income standard for a one person need group (see OAR 461-155-0250(3)).

(2) Has countable income at or below 300 percent of the full SSI standard for a single individual; has established a qualifying trust as specified in OAR 461-145-0540(9)(c); or is eligible for the OSIPM-EPD program.

(3) Meets one of the following eligibility standards:

(a) The criteria in OAR 411-015-0100 (except subsection (1)(b)) regarding eligibility for nursing facility or community-based waived services.

(b) The level-of-need criteria for an ICF/MR.

(c) The service eligibility standards for medically fragile children in OAR 411-350-0010.

(d) The service eligibility standards for the CIIS (Children's Intensive In-Home Services) behavioral program in OAR 411-300-0100 to 411-300-0220.

(e) The service eligibility standards for the Medically Involved Children's Waiver in chapter 411, division 355 of the Oregon Administrative Rules.

(4) Resides in one of the following locations for a continuous period of care (see OAR 461-001-0030) and receives long-term care services (see OAR 461-180-0040 regarding the effective date for long-term care) authorized by the Department:

(a) A Medicaid-certified nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65 or older.

(d) A community-based setting covered by:

(A) A waiver under Title XIX of the Social Security Act; or

(B) The Independent Choices Program (see OAR 411-030-0100).

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; 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 17-2004, f. & cert. ef. 7-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 10-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-0780

Eligibility for Pickle Amendment Clients; OSIPM

(1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94 566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving Social Security Benefits (SSB);

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the individual when he or she became ineligible for SSI or OSIP is used as the individual's countable Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment. Add that figure to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment. For spouses in the same financial group, perform the above calculation for each spouse, combine the results and add the subtotal to all other countable unearned and adjusted earned income. If the total is less than the full SSI

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standard for a couple plus the \$20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: If SSI was Last Received During Multiply Current SSB by [Calculations not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-0875

Specific Requirements; Retroactive Medical

(1) The following clients are evaluated for retroactive eligibility for medical assistance:

(a) Clients applying for the BCCM, MAA, MAF, OSIPM, QMB-DW, REFM, or SAC program. This includes deceased individuals who would have been eligible for Medicaid covered services had they, or someone acting on their behalf, applied.

(b) Clients found ineligible for the BCCM, MAA, MAF, OSIPM, or SAC program solely because they do not meet the citizenship requirements of OAR 461-120-0125. Clients eligible under this subsection are eligible only for CAWEM program benefits (see OAR 461-135-1070).

(c) Clients found eligible for QMB-BAS, who are evaluated for OSIPM retroactive eligibility.

(2) If eligible for medical assistance retroactively, the client's eligibility cannot start earlier than the date indicated by OAR 461-180-0140.

(3) In the BCCM program, a woman cannot be eligible prior to January 1, 2002.

(4) In the OHP and QMB-BAS programs, there are no retroactive medical benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 8-1993(Temp), f. & cert. ef. 4-26-93; 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 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-0900

Specific Requirements; REF, REFM

(1) In addition to the eligibility requirements in other rules in Chapter 461 of the Oregon Administrative Rules, an individual must meet all of the requirements in this rule to be eligible for the REF and REFM programs.

(2) An individual must meet the alien status requirements of OAR 461-120-0120, except a child (see OAR 461-001-0000) born in the United States to an REF or REFM client meets the alien status requirements for the REF and REFM programs as long as each parent (see OAR 461-001-0000) in the household group (see OAR 461-110-0210) meets the alien status requirements of OAR 461-120-0120.

(3) An individual is not eligible to receive REF and REFM if the individual is a full-time student of higher education, unless such education is part of a cash assistance case plan. Any education or training allowable under an approved case plan must be less than one year in length. For the purposes of this rule, "higher education" means education that meets the requirements of one of the following subsections:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at these institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(4) Eligibility for REF and REFM is limited to the first eight months in the United States, with the exception of Afghan special immigrants limited to six months in the United States:

(a) For an individual who meets the alien status requirements of OAR 461-120-0120(1), (3), (4), or (5), the month that the individual enters the U.S. counts as the first month.

(b) For an individual who meets the alien status requirements of OAR 461-120-0120(2), (6), or (7), the month that the individual was granted the individual's status counts as the first month.

(c) For an individual who meets the alien status requirements of OAR 461-120-0120(8):

(i) If the individual enters the U.S. with the special immigrant status, the month that the individual enters the U.S. counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the U.S., then the month in which the special immigrant status was granted counts as the first month.

(d) Months in the United States are counted as whole months. There is no prorating of months.

(5) For an individual who meets the requirements of section (4) of this rule:

(a) When the individual resides in Clackamas, Multnomah, or Washington counties:

(A) The individual is not eligible to receive REF, TANF, or TANF-related employment services through the Department. To receive benefits, the individual is required to participate in the Refugee Case Service Project (RCSP). This individual is referred to their local resettlement agency to be enrolled in RCSP and receives all other Department services through the individual's local Department office.

(B) An individual who no longer meets the requirements of section (4) of this rule is no longer eligible to receive cash or case management services through RCSP. If this individual has been in the United States for 12 months or less, with the exception of Iraqi and Afghan special immigrants, the individual is referred to the New Arrival Employment Services contractor for employment services. Iraqi special immigrants are limited to no more than eight months and Afghan special immigrants are limited to no more than six months.

(b) When the individual resides in counties other than Clackamas, Multnomah, and Washington:

(A) RCSP is not available. The individual is served at the individual's local Department office.

(B) For an individual who meets the eligibility requirements of the MAA, MAF, or TANF programs, the MAA, MAF, and TANF benefits are prior resources.

(C) An individual is eligible for the REF and REFM programs if the individual:

(i) Does not meet the eligibility requirements of at least one of the MAA, MAF, and TANF programs; and

(ii) Meets the financial and non-financial eligibility requirements for the REF and REFM programs.

(D) An REF client may not participate in the Pre-TANF program.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

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 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 33-1996(Temp), 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 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-1100

Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, the term private major medical health insurance refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and must not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) Must not be covered by private major medical health insurance and must not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

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(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP or OHP-OP6;

(b) Meet the resource limit provided in OAR 461-160-0015;

(c) Meet budgeting requirements of OAR 461-160-0700;

(d) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(e) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding six months. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under OAR 461 135 0990;

(C) The person's private health insurance premium was subsidized by FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-1102

OHP-OPU; Effective Dates for the Program

(1) Effective July 1, 2004, the OHP-OPU program is closed to new applicants other than an OHP Reservation List Applicant permitted under OAR 461-135-1125. Except as provided in sections (2) to (4) of this rule, a new applicant is a person with a date of request (see OAR 461-115-0030) after June 30, 2004. A new applicant cannot be found eligible for the OHP-OPU program.

(2) A person is not a new applicant if the Department determines that the person is continuously eligible for medical assistance as follows:

(a) The person is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, or after that date pursuant to subsections (b) to (e) of this section, and the Department determines that the person continues after that date to meet the eligibility requirements for OHP-OPU.

(b) The person is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for CAWEM based on the OHP-OPU program, and the Department determines that the person continues to meet the eligibility requirements for OHP-OPU except for citizenship or alien status requirements.

(c) The person's eligibility ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program,

or under CAWEM based on such program, and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(d) The person is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(e) The Department determines that the person was continuously eligible for OHP-OPU on or after June 30, 2004 under subsections (a) to (d) of this section.

(3) Family Health Insurance Assistance Program (FHIAP) recipients who notified FHIAP by May 31, 2008 of their choice to move to OHP Standard when notified their FHIAP subsidy would end effective May 31, 2008 are not considered new applicants for initial OHP Standard benefits that are effective June 1, 2008.

(4) A person who is not continuously eligible under section (2) of this rule is not a new applicant if:

(a) The person's eligibility ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or SAC program, or the related CAWEM program; and

(b) The person meets the eligibility requirements for OHP-OPU on the related CAWEM program:

(A) Within 45 days of a date of request established during the last month of eligibility for a program listed in subsection (a) of this section; or

(B) Within 45 days of the date the Department initiates a redetermination or recertification of eligibility for a program listed in subsection (a) of this section.

(5) Except as provided in section (2) of this rule, a person who loses eligibility for a medical assistance program and applies or reapplies for medical assistance is treated as a new applicant for purposes of the OHP-OPU program.

(6) The Department intends that effective July 1, 2004, all other rules related to application, certification, recertification, or eligibility for the OHP-OPU program be applied and construed to achieve the purpose of this rule and that in the event of any ambiguity this rule controls.

Stat. Auth.: ORS 409.050, 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042 & 2003 OL Ch. 710, 735

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 13-2008, f. 5-30-08, cert. ef. 6-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-1110

Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, a person who is enrolled full time in higher education is ineligible to receive benefits, unless the requirements of one of the following subsections are met:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

(2) For the purposes of this rule:

(a) Higher education includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) Full time is defined by the school.

(c) Meets the income requirements for a Pell grant means:

(A) The student's Student Aid Report shows an "expected family contribution" less than \$4,111 for the 2007-2008 school year or less than \$4,042 for the 2008-2009 school year; or

(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's higher education status ends when the student graduates, drops out (as verified by their disenrolling), reduces the student's credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

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461-135-1125

Reservation Lists and Eligibility; OHP-OPU

(1) The "OHP 7210R Application" is an application mailed as a result of the individual's selection from the OHP Standard Reservation List and is subject to the conditions of this rule.

(2) The "OHP Standard Reservation List" means a list of individuals who may be considered for the OHP-OPU program as a new applicant at such times as the Department determines that new applicants may be added into the program. This list is used to manage enrollment of new applicants as defined by OAR 461-135-1102 into the program within the limits of program authority and funding.

(3) An "OHP Standard Reservation List Applicant" means an individual who is eligible to apply for OHP-OPU under this rule and submits an OHP 7210R Application.

(4) When the Department specifies that the OHP Standard Reservation List is open, an individual is placed on the OHP Standard Reservation List if all of the following requirements are met:

(a) The individual, or someone acting on behalf of the individual, may request placement on the OHP Standard Reservation List by calling the designated telephone number for the OHP Standard Reservation List or in writing. A written request must arrive through one of the following methods:

(A) By mail to the designated mailing address for the OHP Standard Reservation List.

(B) By fax or hand delivery to a local Department office that receives client applications for the Oregon Health Plan.

(C) By electronic submission from the OHP website or by e-mail to the OHP Standard Reservation List e-mail address.

(b) The full name, date of birth, and mailing address of each individual requesting placement on the OHP Standard Reservation List must be provided to the Department and received by the Department as described in subsection (a) of this section before the request is considered complete.

(c) If the address of an individual changes after the individual makes a request, the individual must provide an updated address to the Department using a method described in subsection (a) of this section. If the individual reports an address change to the Department in a way other than that outlined in subsection (a) of this section, the Department cannot guarantee the address change will be reflected in the reservation list, but will make reasonable efforts to incorporate that address change.

(5) The following procedures apply to the OHP Standard Reservation List:

(a) Individuals completing a request for placement on the OHP Standard Reservation List are assigned a reservation number. All members of an OHP filing group (see OAR 461-110-0400 for filing group composition) requesting placement on the OHP Standard Reservation List are assigned the same reservation number.

(b) The Department may request that individuals voluntarily provide their social security number (prior to the OHP 7210R Application). The Department may use the social security number for purposes of identification to help prevent duplicate reservations. The Department may not deny placement on the OHP Standard Reservation List because an individual does not provide a social security number.

(c) The Department sends confirmation to individuals who are placed on the OHP Standard Reservation List. If there is already a reservation established, individuals who have received confirmation from the Department need not make an additional request unless the reservation was removed (see section (8) of this rule), already used, or withdrawn.

(6) Requesting placement on the OHP Standard Reservation List, receiving a reservation number, or being placed on the OHP Standard Reservation List does not constitute an application for OHP-OPU or any other medical program administered by the Department. Individuals placed or refused placement on the OHP Standard Reservation List are not evaluated for DHS medical program eligibility.

(7) At such times that the Department determines that it has the requisite authority and funding and that new applicants can be added to the OHP-OPU program, and after the Department determines the number of new applicants that can be added, a designated number of individuals on the OHP Standard Reservation List will be randomly selected to be mailed an OHP 7210R Application according to the following conditions:

(a) The Department will determine and designate the number of individuals on the OHP Standard Reservation List to receive the OHP 7210R Application. The Department will send an individual an OHP 7210R Application only if the reservation number is randomly selected to receive the application.

(b) The OHP 7210R Application must be received by the Department within 45 days from the date it is mailed for the individual to be considered an OHP Standard Reservation List Applicant.

(c) When an individual is mailed an OHP 7210R Application based on random selection from the OHP Standard Reservation List, the reservation number and its position on the list has been used and is no longer available.

(8) When the Department determines that the OHP Standard Reservation List should be discontinued, all individuals currently on the list are removed. If the Department reinstates the OHP Standard Reservation List, individuals may again request placement on the list according to sections (4) and (5) of this rule.

(9) Nothing in this rule prevents any individual from applying for medical assistance at any time. However, new applicants as defined in OAR 461-135-1102 for OHP-OPU are managed by this OHP Standard Reservation List.

Stat. Auth.: ORS 409.050, 411.060, 414.042

Stats. Implemented: ORS 409.010, 411.060, 414.042

Hist.: SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-135-1175

Senior Farm Direct Nutrition Program

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides farm direct checks to low income individuals.

(2) An individual is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has countable income (see OAR 461-001-0000) less than 135 percent of the Federal Poverty Level as listed in OAR 461-155-0295.

(b) Receives Medicaid or Food Stamp benefits.

(c) Is homeless or resides in their own home or rental property.

(d) Is age 60 or older.

(3) This program is funded by a grant from the United States Department of Agriculture. The Department determines the allotment amount on an annual basis, based on the grant allocation received from the United States Department of Agriculture and the number of eligible individuals.

(4) The Department may not issue more than one SFDNP allotment per participant, per year.

(5) SFDNP begins June 1 each year and ends on October 31 each year. In order to qualify for the program, the Department must receive the applicant's letter of interest by September 30 of the year in question.

(6) See OAR 461-145-0190 to determine the treatment of this benefit in the eligibility process for other programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070

Stats. Implemented: ORS 410.070, 411.060, 411.070

Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-140-0010

Assets; Income and Resources

(1) An available asset, either income or a resource, is categorized as either excluded or countable (defined in OAR 461-001-0000).

(2) The availability of resources is covered in OAR 461-140-0020.

(3) The availability of income is covered in OAR 461-140-0040.

(4) Excluded assets are identified in the rules in this chapter (see divisions 140 and 145 in particular) and are not considered when a client's eligibility and benefit level are determined.

(5) In the GA, GAM, OSIP, OSIPM, and QMB programs, an asset excluded pursuant to a rule in OAR Chapter 461 remains excluded as long as the asset is used in a manner consistent with the rule that provided the exclusion.

(6) An available asset not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of a client.

(7) An asset may not be counted as a resource and as income in the same month.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08

461-140-0040

Determining Availability of Income

(1) This rule describes the date income is considered available, what amount of income is considered available, and situations in which income is considered unavailable.

(2) Income is considered available the date it is received or the date a member of the financial group (see OAR 461-110-0530) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

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(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(f) In prospective budgeting, income is available in the month the income is expected to be received (see OAR 461-150-0020).

(3) The following income is considered available even if not received:

(a) Deemed income.

(b) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

(c) In the FS program, the portion of a payment from the TANF program counted as disqualifying income under OAR 461-145-0105.

(4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.

(5) The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable:

(A) In the FS program, under OAR 461-145-0105; or

(B) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, and TANF programs, under subsection (3)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) Income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the individual not in the financial group is considered unavailable.

(B) If the portion intended for the care of the individual not in the financial group cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the financial group is then considered unavailable.

(g) In the FS, MAA, MAF, OHP, REF, REFM, and TANF programs, income controlled by the client's abuser if the client is a victim of domestic violence (see OAR 461-001-0000), the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the OSIP, OSIPM, and QMB programs, unearned income not received because a payment was reduced to cover expenses incurred by a member of the financial group to secure the payment. For example, if a retroactive check is received from a benefit program other than SSI, legal fees connected with the claim are subtracted. Or, if payment is received for damages received as a result of an accident the amount of legal, medical or other expenses incurred by a member of the financial group to secure the payment are subtracted.

(i) In the REFM program, any income used for medical or medical-related purposes.

(6) The availability of lump-sum income is covered in OAR 461-140-0120.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.117, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-140-0220

Determining if a Transfer of an Asset is Disqualifying

A transfer of an asset is not disqualifying if the requirements of OAR 461-140-0242 or one of the following sections are met:

(1) The asset was personal belongings as described in OAR 461-145-0390.

(2) The asset was sold or traded:

(a) In all programs except the Food Stamp program, for compensation equal to or greater than fair market value.

(b) In the Food Stamp program, for compensation near, equal to or greater than fair market value.

(3) The asset was transferred between members of the same financial group, including members who are ineligible aliens or disqualified people.

(4) The transfer settled a legally enforceable claim against the asset or client.

(5) The amount of the resource was equal to or less than the amount that was excluded at the initial month (see OAR 461-001-0000) of eligibility under OAR 461-160-0855 due to payments received under a qualified partnership policy (see OAR 461-001-0000).

(6) In all programs except the OSIP and OSIPM programs, a court ordered the transfer.

(7) In the OSIP and OSIPM programs, a court ordered the transfer and:

(a) The transfer occurs more than 36 months or 60 months before the date of request (see OAR 461-115-0030), whichever is applicable under OAR 461-140-0210(5); or

(b) There is an institutionalized spouse, and — after performing the calculations required in OAR 461-160-0580(2) — the amount of resources allocated to a community spouse does not exceed the largest of the four amounts set forth in OAR 461-160-0580(2)(f).

(8) The client was a victim of fraud, misrepresentation, or coercion, and legal steps have been taken to recover the asset.

(9) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000), the asset is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(10) In the OSIP and OSIPM programs, the client is in a standard living arrangement (see OAR 461-001-0000).

(11) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000):

(a) The asset is an annuity purchased from January 1, 2006 through June 30, 2006, and the client or the spouse of the client is the annuitant.

(b) The asset is an annuity purchased on or after July 1, 2006, and the annuity meets the requirements of OAR 461-145-0022(10).

Stat. Auth.: ORS 410.070, 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 410.070, 411.060, 411.070, 411.708, 411.816, 412.049, 414.025,

414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; 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 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 2-2002(Temp), f. & cert. ef. 2-26-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-140-0242

Disqualifying Transfer of Assets Including Home; GA, GAM, OSIP, OSIPM

For a client in a nonstandard living arrangement (see OAR 461-001-0000) in the GA, GAM, OSIP, and OSIPM programs:

(1) For the purposes of this rule:

(a) The definition of "child" in OAR 461-001-0000 does not apply.

(b) "Child" means a natural or adoptive son or daughter who is:

(A) Under age 21; or

(B) Any age and has been determined to meet the blindness criteria of OAR 461-125-0330 or the disability criteria of OAR 461-125-0370.

(2) A transfer of an asset (including a home) by a client or the spouse of the client is a disqualifying transfer unless the requirements of at least one of the following subsections are met:

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits.

(b) The title to the asset was transferred to the person's spouse, the person's child who is blind or has a disability under the criteria of the Social Security Administration, or another for the sole benefit of the spouse or a child who is blind or has a disability under the criteria of the Social Security Administration, provided that the transfer is arranged in such a way that no individual or entity except this spouse or child can benefit from the asset transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse or child who is blind or has a disability under the criteria of the Social Security Administration is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual.

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(c) The transfer was made to a trust described in OAR 461-145-0540(9), except that a transfer to a trust under OAR 461-145-0540(9)(a) is disqualifying if the client is age 65 or older.

(d) The transfer was made to a trust described in OAR 461-145-0540(10) established solely for the benefit of an individual under 65 years of age who has a disability that meets the criteria of the Social Security Administration. This subsection applies to all transfers made on or after July 1, 2006.

(e) The transfer is a transfer described in OAR 461-160-0580(2).

(f) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of an asset by a client.

(3) A transfer of a home by a client or the spouse of the client is a disqualifying transfer unless the title was transferred to the client's:

(a) Child;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care (see OAR 461-001-0000); or

(c) Natural or adoptive son or daughter who meets the requirements of each of the following paragraphs:

(A) The son or daughter resided with the client in the client's home continuously for at least two years immediately prior to the client's admission to long-term care other than an absence from the home that is not intended to, and does not, exceed 30 days.

(B) The son or daughter provides convincing evidence that he or she provided services that permitted the client to reside at home for at least two years rather than in an institution or long-term care facility.

(C) Without receiving payment from the Department, the son or daughter must have directly provided the services required by paragraph (B) of this subsection as described in both of the following subparagraphs for a total of at least 20 hours per week.

(i) On a daily basis, one or a combination of any of the following activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0006:

(I) Eating.

(II) Dressing/Grooming.

(III) Bathing/Personal Hygiene.

(IV) Mobility.

(V) Elimination.

(VI) Cognition/Behavior.

(ii) One or a combination of any of the following instrumental activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0007:

(I) Housekeeping.

(II) Laundry.

(III) Meal Preparation.

(IV) Medication Management.

(V) Shopping.

(VI) Transportation.

(4) Except for a transfer permitted under section (3) of this rule, each of the following subsections applies in determining whether an asset is considered transferred for fair market value:

(a) The compensation received for the asset must be in a tangible form with intrinsic value.

(b) The Department presumes that services provided for free at the time were intended to be provided without compensation, and that a transfer to an individual for services provided for free in the past is a disqualifying transfer of assets. This presumption is rebuttable with convincing evidence. This evidence must also show that there was an express agreement to provide services for compensation at the time the services were provided.

(c) Compensation for services is valued at the average market rate at the time the services were provided, unless the express agreement provides a lower rate.

(5) If a transfer is made for less than fair market value and is not exempt from disqualification under this rule, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility and is not exempt under subsection (2)(a) of this rule.

(6) To rebut the presumption in section (5) of this rule, the client must present evidence other than his or her own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the client to show one of the following:

(a) The decision to make the transfer was not within the client's control;

(b) At the time of transfer, the client could not reasonably have anticipated applying for medical assistance;

(c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance;

(d) Because of other, similarly convincing, circumstances, it appears more likely than not that the transfer was not made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.

(7) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (5) of this rule because the asset may not always be excluded and if the client had received full compensation for the asset, the compensation received would have been used to determine future eligibility.

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.060, 411.710, 414.042

Hist.: AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; 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 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0020

Annuities; Not OSIPM

(1) For the purposes of this rule:

(a) "Actuarially sound" means a commercial annuity which pays principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within three months of the actuarial life expectancy.

(b) For a client, an annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380)

(c) The definition of "child" in OAR 461-001-0000 does not apply.

(d) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(e) "Commercial annuities" mean contracts or agreements (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity is counted as a resource if:

(a) The annuity does not make regular payments for a lifetime or specified number of years; or

(b) The annuity does not qualify for exclusion as a resource under subsection (4)(c) of this rule.

(3) If an annuity is a countable resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular payments already received, minus any early withdrawals, and minus any surrender fees.

(4) Commercial annuities and payments from such annuities are counted as follows:

(a) In all programs except OSIP, OSIPM, and QMB, annuity payments are counted as unearned income to the payee.

(b) In the OSIP and QMB programs:

(A) For a client in a nonstandard living arrangement (see OAR 461-001-0000), if a client or the spouse of a client purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying or for a client in a standard living arrangement (see OAR 461-001-0000), the annuity payments are counted as unearned income to the payee.

(B) If a client or the spouse of a client purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.

(C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried client is the annuitant, the requirements of subparagraph (iv) of this paragraph must also be met and if a spouse of a client is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.

(i) The annuity is irrevocable.

(ii) The annuity must be actuarially sound.

(iii) The annuity is issued by a business that is licensed and approved to issue commercial annuities by the state in which the annuity is purchased.

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(iv) If an unmarried client is the annuitant, the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(v) If a spouse of a client is the annuitant, the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(I) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) A child of the spouse; and the client in the event that this child does not survive the spouse.

(D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income to the payee.

(c) For OSIPM, see OAR 461-145-0022.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0022

Annuities; OSIPM

In the OSIPM program:

(1) For the purposes of this rule:

(a) "Actuarially sound" means a commercial annuity which pays principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within three months of the actuarial life expectancy.

(b) For a client, an annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)

(c) The definition of "child" in OAR 461-001-0000 does not apply.

(d) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(e) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity that does not make regular payments for a lifetime or specified number of years is a resource.

(3) When a client applies for medical benefits, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the client must report any annuity owned by the client or a spouse of the client.

(4) By signing the application for assistance, a client and the spouse of a client agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any commercial annuity purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR 461-160-0580(2)(c).

(5) If the Department is notified about a commercial annuity, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the client.

(6) If a client or a spouse of a client purchases or transfers a commercial annuity prior to January 1, 2006, the following applies:

(a) If the client is in a nonstandard living arrangement (see OAR 461-001-0000), the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying or the disqualification period has already been served, the annuity payments are counted as unearned income to the payee.

(b) If the client is in a standard living arrangement, the annuity payments are counted as unearned income to the payee.

(7) Sections 8 and 9 of this rule apply to a commercial annuity if:

(a) The client is in a nonstandard living arrangement, and the client or the spouse of the client purchases an annuity from January 1, 2006 through June 30, 2006; or

(b) The client is in a standard living arrangement (see OAR 461-001-0000), and the client or the spouse of a client purchase an annuity on or after January 1, 2006.

(8) A commercial annuity covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:

(a) If an unmarried client is an annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(A) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(b) If a spouse of a client is the annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(A) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) A child of the spouse; and the client in the event that this child does not survive the spouse.

(c) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:

(A) The annuity is irrevocable.

(B) The annuity must be actuarially sound.

(C) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income to the payee. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(10) This section lists the requirements for a commercial annuity purchased by the client or the spouse of the client on or after July 1, 2006, when a client is in a nonstandard living arrangement, and the annuity names the client or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income to the payee. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.

(a) The annuity must comply with one of the following paragraphs:

(A) The first remainder beneficiary is the spouse of the client, and in the event that the spouse transfers any of the remainder of the annuity for less than fair market value (see OAR 461-001-0000), the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(B) The first remainder beneficiary is the annuitant's child, and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than fair market value, the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(C) The first remainder beneficiary is the Department for up to the total amount of medical benefits paid on behalf of the client.

(b) The annuity must be irrevocable and nonassignable.

(c) The annuity must be actuarially sound.

(d) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(11) If the client is the annuitant and a commercial annuity does not meet all of the requirements of section (10) of this rule, or the spouse of the client is the annuitant and a commercial annuity does not meet the requirements of subsection (10)(a) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(6) and (7) for calculation of the disqualification period.

(12) Regardless of whether a commercial annuity is a disqualifying transfer of assets, if the annuity does not meet all of the requirements of section (10) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0080

Child Support and Cash Medical Support

(1) Child support and cash medical support paid by a non-custodial parent for a dependent child or minor parent in the financial group (see OAR 461-110-0530) are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) In the ERDC program, child support is considered countable unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.

(3) In the FS program, child support and cash medical support are treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by a filing group (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except it is considered countable unearned income in the calculation of the wage supplement.

(c) All other child support is considered countable unearned income.

(d) Cash medical support is considered countable unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.

(e) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(4) In the MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) In determining eligibility, except for clients working under a TANF JOBS Plus agreement, child support received by the Division of Child Support is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) For clients working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

(c) All other child support payments paid directly to the financial group or to a third party on behalf of a member of the financial group is considered countable unearned income.

(d) Cash medical support is excluded in determining countable income.

(5) In the OHP program:

(a) Child support paid directly to the financial group or paid to a third party for the benefit of the financial group is considered countable unearned income.

(b) Cash medical support is excluded.

(6) In the OSIP, OSIPM, and QMB programs, all child support and cash medical support paid to the financial group are considered countable unearned income. Child support and cash medical support paid by the financial group are not deductible from income.

(7) In the SFPSS program, notwithstanding section (4) of this rule, for on-going eligibility and benefit determination:

(a) Child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(8) Notwithstanding section (4) of this rule, for on-going eligibility and benefit determination for TANF clients for whom deprivation is based on the unemployment or underemployment of both parents:

(a) Child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(d) Child support payments received by a filing group (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except it is considered countable unearned income in the calculation of the wage supplement.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; 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 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 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; 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 7-2008(Temp), f. & cert. ef. 3-21-08 thru 9-17-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0090

Disability Benefit

(1) This rule covers public and private disability benefits, except the following:

(a) Agent Orange disability benefits (covered in OAR 461-145-0005).

(b) Radiation Exposure Compensation Act payments (covered in OAR 461-145-0415).

(c) Social security based on disability or SSI (covered in OAR 461-145-0490 and 461-145-0510).

(d) Veterans benefits (covered in OAR 461-145-0580).

(e) Workers compensation (covered in OAR 461-145-0590).

(2) For each disability payment covered under this rule:

(a) If received monthly or more frequently:

(A) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, income from employer-sponsored disability insurance is counted as earned income (see OAR 461-145-0130) if paid to a client who is still employed while recuperating from an illness or injury.

(B) In the OSIP, OSIPM, and QMB programs, income from employer-paid disability insurance is counted as earned income if received within six full calendar months after stopping work.

(C) Except as provided in paragraphs (A) and (B) of this subsection, the payment is counted as unearned income.

(b) All payments other than those in subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0261

Individual Development Account (IDA)

(1) An Individual Development Account (IDA) is a trust-like savings account established under P.L. 105-285 designed to help low-income individuals save for specified purposes. The individual makes deposits from his or her earnings, and these are matched by a combination of government and private-sector funds.

(2) For eligibility determinations in all programs:

(a) Except for FS, deposits from the account holder's earnings are excluded from gross earned income. For FS, the deposit remains countable earned income.

(b) Matching deposits from government and private-sector funds are excluded from income.

(c) The IDA savings account is excluded from resources.

(d) Interest earned by the IDA savings account is excluded from income.

(3) For client liability calculations (see OAR 461-160-0610), all income deposited into an IDA is counted as earned income.

(4) If a client makes an emergency withdrawal from the account, that income is counted as lump-sum income.

Stat. Auth.: ORS 411.060, 411.700, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.700, 411.816, 412.014, 412.049, 414.042

Hist.: SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0310

Life Estate

(1) For all programs except OSIP, OSIPM, and QMB, if a financial group (see OAR 461-110-0530) is living in real property (see OAR 461-001-0000) while a member holds a life estate (see OAR 461-001-0000) in this property, the property is treated as a home (see OAR 461-145-0220). In all other situations, a life estate is treated as real property (see OAR 461-145-0420).

(2) In the OSIP, OSIPM, and QMB programs:

(a) For purposes of this section and section (3) of this rule, the value of the rights conferred by the life estate is established by the Life Estate and Remainder Interest Table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(A).

(b) A life estate owned by a member of the financial group is treated as follows:

(A) If a member of the financial group is living on the property the value of the life estate is treated as a home (see OAR 461-145-0220).

(B) If a member of the financial group is not living on the property the value of the life estate is counted as a resource. The life estate is considered unavailable if other parties with an ownership interest in the property refuse

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to sell their interest or refuse to purchase the life estate interest in the property.

(3) In the OSIP and OSIPM programs:

(a) A transfer for less than fair market value (see OAR 461-001-0000) in which a member of the financial group retains a life estate is a disqualifying transfer. A transfer is considered for less than fair market value if the fair market value of the transferred resource on the day prior to the transfer is greater than the sum of the value of the rights conferred by the life estate plus the compensation received for the transfer.

(b) If a member of the financial group purchases a life estate interest in the home of another individual on or after July 1, 2006, the purchase is considered a transfer of resources unless the client resides in this home for at least 12 consecutive months after the date of the purchase. The value of the transfer for a client who does not reside in the home for at least 12 consecutive months is calculated by using the purchase price of the *life estate*.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; 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

461-145-0490

Social Security Benefits

Except for SSI (see OAR 461-145-0510) and death benefits remaining after burial costs (see OAR 461-145-0500), Social Security benefits (SSB) are treated as follows:

(1) Monthly payments are counted as unearned income.

(2) Except as provided in section (3) of this rule, all payments other than monthly payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(3) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs:

(a) For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

(b) Retroactive payments are counted as unearned income in the month of receipt except as provided in subsection (c) of this section.

(c) When retroactive payments are made through the representative payee of an individual who is required to have a representative payee because of drug addiction or alcoholism, the retroactive payments may be required to be made in installments. If the payments are made in installments, the total of the benefits to be paid in installments is considered unearned income in the month in which the first installment is made.

(d) Any remaining amount from a retroactive payment after the month of receipt is counted as an excluded resource for nine calendar months following the month in which the payment is received. After the nine-month period, any remaining amount is a countable resource.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.700, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0510

SSI

(1) In the ERDC, FS, GA, GAM, and OHP programs, if a client is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.

(2) In the ERDC, GA, GAM, and OHP programs:

(a) A monthly SSI payment is counted as unearned income.

(b) Lump-sum SSI payments are counted according to OAR 461-140-0120.

(3) In the EXT, MAA, MAF, REF, REFM, and TANF programs:

(a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the financial group (see OAR 461-110-0530) the month following receipt of the payment.

(b) An SSI lump-sum payment is excluded in the month received and the next month.

(4) In the FS program:

(a) A monthly SSI payment is counted as unearned income.

(b) A lump-sum SSI payment is excluded.

(5) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, a retroactive SSI payment is excluded for nine months after the month of receipt. After the nine-month period, any remaining amount is a countable (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0560

Uniform Relocation Act

Reimbursements from the Federal Uniform Relocation Assistance Act (42 U.S.C. 4621-4625) and from the Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651-4655) are excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.014, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 17-2008, f. & cert. ef. 7-1-08

461-145-0582

Victims' Assistance

(1) Payments to victims of Nazi persecution covered by Public Law 103 286 and payments to victims of crime under 42 U.S.C. 10602 (The Crime Act of 1984) are excluded as income, and amounts retained are excluded as a resource as long as the amounts are not commingled with other funds.

(2) For other types of victims' assistance (not covered by section (1) of this rule):

(a) Payments that are considered a reimbursement (see OAR 461-001-0000) for a lost item are treated as provided in OAR 461-145-0440.

(b) Payments for pain and suffering are treated in the same manner as personal injury settlements under OAR 461-145-0400.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

461-155-0180

Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2008 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2008 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2008 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 185 percent of the 2008 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 200 percent of the 2008 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-155-0235

OHP Premium Standards

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the *filing group* (see OAR 461-110-0400):

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The countable income of the *financial group* (see OAR 461-110-0530) is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the countable income, the monthly premium for each non exempt OHP-OPU client in the *benefit group* (see OAR 461-110-0750) is determined from the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.598, 411.600

Stats. Implemented: ORS 411.060, 411.070, 411.598, 411.600

Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long term care or in a waived nonstandard living arrangement (see OAR 461-001-0000), the countable income limit standard is 300 per-

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cent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The standard in this section is used as the adjusted income limit for non SSI OSIP and OSIPM clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. See OAR 461-155-0020 for the adjusted number in the household. The total standard is: [Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and receive services in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one person need group.

(e) When one or both spouses receive SSI and are not included in subsection (d) of this section, the two-person need group is used to determine the SIP amount. This amount is used even if one (or both) of the individuals is receiving services and has a need group of one according to OAR 461-110-0630.

(5) In the OSIP and OSIPM programs, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted earned income limit is 250 percent of the 2008 federal poverty level for a family of one. This 250 percent limit equals \$2,167 per month or \$26,004 per year.

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; 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 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; 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 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; 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 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-155-0270

Room and Board and Personal Allowance Standards for Waivered NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in a waived nonstandard living arrangement (see OAR 461-001-0000), the maintenance standard includes the room and board and personal needs standards:

(1) Room and board standard: [Table not included. See ED. NOTE.]

(2) Personal needs standard: [Table not included. See ED. NOTE.]

(3) The room and board payment is required for clients residing in a community based care facility (see OAR 411-027-0025).

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert.

ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; 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 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-155-0500

Special Needs; Overview

(1) In the GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, and TANF programs, special needs are needs not included in the basic standard. They may be one-time needs or ongoing needs.

(2) Ongoing special needs are needs that last several months at a consistent cost. Examples are special diets and accommodation allowances. OAR 461-155-0010 is used to determine how special needs are considered for each program.

(3) To be eligible for a special need item, clients must have no other available resources in the community or in their natural support system to meet the need, excluding resources used in determining eligibility.

(4) To be eligible for a special need item, clients must not be eligible for the item through Medicare, Medicaid, or any other medical coverage.

(5) Clients may be eligible for an ongoing special need item if providing the ongoing special need item is authorized in lieu of additional provider service hours pursuant to OAR 411-030-0002 through 411-030-0090 and is more cost-effective.

(6) The Department will authorize payment for one-time and ongoing special needs for the following, in accordance with OAR 461-155-0510 through 461-155-0680:

(a) One-time needs for the following:

(A) Community based facility room and board (see OAR 461-155-0630).

(B) Community transition services (see OAR 461-155-0526).

(C) Home adaptations to accommodate a client's physical condition (see OAR 461-155-0551).

(D) Home repairs (see OAR 461-155-0600).

(E) Moving costs (see OAR 461-155-0610).

(F) Property taxes (see OAR 461-155-0620).

(b) Ongoing needs for the following:

(A) Accommodation allowances (see OAR 461-155-0660).

(B) Food for guide dogs and special assistance animals (see OAR 461-155-0530).

(C) Laundry allowances (see OAR 461-155-0580).

(D) Restaurant meals (see OAR 461-155-0640).

(E) Special diet allowances (see OAR 461-155-0670).

(F) Telephone allowances (see OAR 461-155-0680).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 17-2008, f. & cert. ef. 7-1-08

461-160-0010

Use of Resources in Determining Financial Eligibility

Countable (see OAR 461-001-0000) resources are used to determine eligibility as follows:

(1) In the EA program, the countable resources of a financial group (see OAR 461-110-0530) are used to reduce benefits.

(2) In the FS, GA, GAM, MAA, MAF, QMB, REF, REFM, SAC, and TANF programs, a need group (see OAR 461-110-0630) is not eligible for benefits if the *financial group* has countable resources above the resource limit (OAR 461-160-0015).

(3) In the OHP program:

(a) Need group members who are HPN (see OAR 461-001-0000) or OHP CHP (see OAR 461-135-1100) are not eligible if the countable resources of the financial group are above the resource limit (OAR 461-160-0015).

(b) If an HPN or OHP-CHP client is determined eligible, changes in resources do not affect eligibility during the certification period (see OAR 461-001-0000) or until their eligibility otherwise ends.

(4) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs, a need group (see OAR 461-110-0630) is not eligible for benefits if the financial group has countable resources above the resource limit.

(a) When a child (see OAR 461-001-0000) is applying, the parental resources are deemed available to the child. The amount deemed available to the child is the amount the parental resources exceed the resource limit (OAR 461-160-0015) of:

(A) A one person need group, if one parent lives in the child's household; or

(B) A two person need group, if two parents (or one parent and the spouse of that parent) live in the child's household.

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(b) As used in this section, parental resources mean the countable resources of:

- (A) Each parent in the child's financial group, and
- (B) Each spouse of a parent in the child's financial group.
- (c) If more than one child is applying, the value of the deemed resources is divided evenly between the applying children.
- (d) The parental resources are not deemed available to an ineligible child.

(e) The value of the parental resources is subject to deeming whether or not those resources are available to the child.

(5) In the OSIP-EPD and OSIPM-EPD programs:

(a) A need group (see OAR 461-110-0630) is not eligible for benefits if the financial group has countable resources above the resource limit (OAR 461-160-0015).

(b) Any money in an approved account (see OAR 461-001-0035) is excluded during the determination of eligibility.

(c) Assets purchased from moneys in an approved account are excluded, provided they meet the requirements of OAR 461-145-0025.

(d) Assets purchased as employment and independence expenses (see OAR 461-001-0035) are excluded, provided they meet the requirements of OAR 461-145-0025.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.117, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; 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 9-1999, f. & cert. ef. 7-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08

461-160-0550

Income Deductions; GA, GAM, QMB and Non-SSI OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD) in the Community When There Are No Children in the Household Group

(1) This rule is used to determine adjusted income (see OAR 461-001-0000) for all GA, GAM, and QMB clients and for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

- (a) Live in the community;
- (b) Do not receive SSI;
- (c) Do not receive Title XIX waived services; and
- (d) Have no children (see OAR 461-001-0000) in the household group (see OAR 461-110-0210).

(2) To determine adjusted income for clients described in section (1) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) One standard deduction of \$20 from unearned income. This deduction may be taken from earned income if the client has less than \$20 in unearned income.

(b) One standard earned income deduction of:

- (A) \$65 for GA, GAM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB clients who are not blind; or
- (B) \$85 for GA, GAM, OSIP-AB, OSIPM-AB, and QMB clients who are blind.

(c) An income deduction for documented impairment-related work costs for:

- (A) OSIP-AB, OSIP-AD, OSIPM-AB and OSIPM-AD clients; and
- (B) QMB clients under age 65.
- (d) One half of the remaining earned income.
- (e) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs, and QMB clients less than the age of 65.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; 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 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; 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 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-160-0551

Income Deductions; Non-SSI OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD) in the Community When There Are Children in the Household Group

(1) For purposes of this rule an ineligible person is an individual who is not eligible to receive either SSI or TANF benefits.

(2) This rule is used to determine adjusted income (see OAR 461-001-0000) for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

- (a) Live in the community;
- (b) Do not receive SSI;

(c) Do not receive Title XIX waived services; and

(d) Have children (see OAR 461-001-0000) in the household group (see OAR 461-110-0210).

(3) To determine adjusted income for clients described in section (2) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) An allocation as described below:

(A) When an adult is applying, income is allocated (see paragraph (C) of this subsection) from an ineligible spouse of the client to each ineligible natural or adopted child of the couple. If the remaining countable income of the ineligible spouse is equal to or less than the difference between the SSI Standard for a couple and the SSI Standard for an individual, there is no income to deem to the applicant. In this situation, to determine eligibility, the applicant's own adjusted income is compared to the non-SSI OSIPM Income Standard for an individual.

(B) When a child is applying:

(i) Income from ineligible parents is first allocated to each ineligible natural or adopted child in the household, except that income may not be allocated from an adult to a stepchild.

(ii) Second, the remaining income is reduced as provided in subsections (b) to (e) of this section.

(iii) Third, the remaining income is reduced by the SSI Standard of the:

(I) Couple if both parents live with the child; or

(II) Individual if only one ineligible parent lives with the child.

(iv) Fourth, the remainder is deemed equally to each natural or adopted child applicant in the household. If the deemed income puts a child over income because of other income they may receive, only the amount that puts them up to the one-person SSI standard is deemed. The remaining deemed income is split evenly among the other applying children.

(C) The maximum amount of each allocation under paragraphs (A) and (B) of this subsection is the difference between the couple and the individual SSI Standard. The difference is \$319 during 2008. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other countable income of each ineligible child.

(b) One standard deduction of \$20 from unearned income. This deduction may be taken from earned income if the client has less than \$20 in unearned income.

(c) One standard earned income deduction of:

(A) \$65 for clients in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs; or

(B) \$85 for clients in the OSIP-AB and OSIPM-AB programs.

(d) An income deduction for documented impairment-related work costs for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

(e) One half of the remaining earned income.

(f) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: SSP 17-2008, f. & cert. ef. 7-1-08

461-160-0620

Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for a client specified in section (3) of this rule as explained in subsections (3)(a) through (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the order below for a client who resides in or is entering a long-term care facility or receives Title XIX waived services.

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(b) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-145-0405.

(c) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for a client who receives waived services.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is

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made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,750 is added to the amount over \$525 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,610, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance is deducted as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,750. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,750.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(g) In the OSIPM program, medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 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 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; 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 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-160-0800

Determining Cost Share; OSIP-EPD, OSIPM-EPD (Including In-Home Services)

(1) Individuals who receive OSIP-EPD and OSIPM-EPD program benefits will have a participant fee (see section (2) of this rule) but do not have a client liability as discussed in OAR 461-160-0620.

(2) In the OSIP-EPD and OSIPM-EPD programs, the participant fee is calculated using the Federal Poverty Level (FPL) (see OAR 461-155-0180) and the individual's total countable (see OAR 461-001-0000) income as follows:

(a) For clients with countable income less than 75 percent of the FPL, the participant fee is \$0.

(b) For clients with countable income equal to or greater than 75 percent but less than 100 percent of the FPL, the participant fee is \$50 per month.

(c) For clients with countable income equal to or greater than 100 percent but less than 250 percent of the FPL, the participant fee is \$100 per month.

(d) For clients with countable income equal to or greater than 250 percent of the FPL, the participant fee is \$150 per month.

(3) The participant fee under section (2) of this rule must be paid each month as a condition of eligibility for as long as the individual is an OSIP-EPD or OSIPM-EPD client.

(4) OSIP-EPD and OSIPM-EPD clients in a licensed community-based care facility must pay room and board costs in addition to their participant fees.

(5) The local office may waive unpaid participant fees if the individual provides verification (OAR 461-115-0610) of significant economic difficulty, such as, but not limited to, homelessness, divorce, domestic violence (see OAR 461-001-0000), or illness.

RS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: 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 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-165-0190

Child Care Payments Paid Directly to a Client

The Department may make payments for child care in the ERDC, JOBS, and TANF programs directly to the client instead of to the provider of child care as follows:

(1) In the initial month (see OAR 461-001-0000) of eligibility — to reimburse the client for a payment already made.

(2) For short-term child care for up to 30 consecutive days while the client seeks a provider that is eligible for child care payment from the Department (OAR 461-165-0180). The 30-day period is measured as follows:

(a) At the time of application, the 30-day period starts when the Department provides the client with the listing form for the child care provider.

(b) If the Department notifies the client that the provider-of-choice is not eligible for child care payment from the Department (OAR 461-165-0180), the 30-day period starts the day after the date of the notice.

(c) If the Department notifies a client that the current provider is not eligible for child care payment from the Department (OAR 461-165-0180), the period starts the first day of the month following the month for which the last Child Care Billing form was issued.

(d) If a client has to use an emergency provider, the 30 days start with the first day the emergency provider was used.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2008, f. & cert. ef. 7-1-08

461-175-0200

Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the FS program:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is sent to cases that are recertified early to align the FS certification end date with the end date of TANF or medical benefits.

(b) A basic decision notice is sent for all other actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the MAA, MAF, REF, REFM, and TANF programs, a notice approving benefits informs the client, within one month following eligibil-

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ity determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(7) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A combination approval and reduction notice was sent to a woman in the prenatal expansion pilot described in OAR 410-120-0030, the woman received a combination approval and reduction notice when her pilot benefits were approved, the woman's pregnancy has since ended, and the woman remains eligible for CAWEM benefits.

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042
Stats. Implemented: ORS 183.417, 411.060, 411.117, 411.816, 412.014, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08

461-180-0040

Effective Dates; Special and Service Needs

(1) The effective date for a special need is the date of request for the special need item.

(2) The effective date for long-term care is determined as follows:

(a) For in-home services the effective date is the date the Department authorizes the service plan. An authorized service plan must:

(A) Specify the date when services will begin (this date cannot be prior to the date that the service plan is completed) and the maximum number of hours authorized; and

(B) Identify the enrolled homemaker worker (see OAR 411-031-0020 and 411-031-0040) or contracted in-home care agency (see OAR 411-030-

0090) the client has employed to provide the authorized services. For the purposes of this paragraph, employed means that the homemaker worker or agency has agreed to provide the services as authorized by the service plan.

(b) For a client residing in, or who will reside in a licensed community-based setting or Medicaid-certified nursing facility the effective date is the later of the following:

(A) The date of request for services; or

(B) The date the individual begins residing in the community-based setting or nursing facility.

(3) The effective date for a reduction or termination in services is the later of the following:

(a) The end of the ten-day notice mailing period; and

(b) The termination date of a service plan.

(4) The effective date for a reduction or termination of an on-going special need is the end of the timely continuing benefit notice period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 17-2008, f. & cert. ef. 7-1-08

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

Rule Caption: Regulations about payment to and from unit of government public providers (public entities).

Adm. Order No.: DMAP 28-2008(Temp)

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08 thru 12-28-08

Notice Publication Date:

Rules Amended: 410-133-0090, 410-133-0100, 410-133-0220, 410-138-0080, 410-138-0380, 410-138-0560, 410-138-0680, 410-138-0740, 410-138-0780

Subject: The School-Based Health Services (SBHS) program and Targeted Case Management (TCM) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended the rules listed above for coordination and consistency of the payment obligations between DHS and public providers responsible for public funds (called the local match) to match federal funds that reimburse covered services. Not all public providers are affected by these rules. In certain situations established as part of a contract or rule, public providers are responsible for providing the local match. OAR's 410-133-0090, 410-133-0100, 410-133-0220, 410-138-0080, 410-138-0380, 410-138-0560, 410-138-0680, 410-138-0740 and 410-138-0780 inform current and potential public providers that participate in providing local match funds about the public entity payment requirements. Because Centers for Medicare and Medicaid Services (CMS) reinterpreted a federal regulation, this temporary rule complies with CMS requirements.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-133-0090

School Medical Provider Payment

(1) Payment will be made to the enrolled School Medical (SM) Provider with the Department of Human Services (DHS), also termed Department, meeting the requirements set forth in the Provider Enrollment Agreement for those covered health services provided by medically qualified staff working within the scope of their practice. Medically qualified staff must meet the qualifications as outlined in OAR 410-133-0120 Medically Qualified Staff.

(2) Signing the school medical provider enrollment agreement sets forth the relationship between the State of Oregon, the Department, and the SM Provider and constitutes agreement by the SM Provider to comply with all applicable rules of the Department, the Division of Medical Assistance Programs (DMAP), and federal and state laws or regulations.

(3) The School Medical (SM) Provider will bill for covered services provided to Medicaid-eligible students according to these School-Based Health Services (SBHS) rules. Payments will be made through the Medicaid Management Information System (MMIS) and the SM Provider must retain the full payment for the covered services provided. The SM Provider must have a Trading Partner Agreement with the Department prior to submission of electronic transactions.

(4) School-based health services (SBHS) authorized under these rules is a cost-sharing Federal Financial Participation (FFP) matching program in which the Education Agency (EA) SM Provider that is a public entity unit

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of government, is responsible for paying the non-federal matching share of the amount of the SBHS claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the SBHS claims will be paid:

(a) The unit of government education agency SM Provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation (FFP) if the public funds meet the following conditions:

(A) The public funds are transferred to the Department from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds;

(C) All sources of funds must be allowable under 42 CFR 433.51 Subpart B;

(b) The unit of government EA SM Provider must pay its non-federal matching share portion for claims submitted to the Department in accordance with OAR 410-120-0035.

(5) Failure to remit the non-federal share described in subsection (4) of this rule will cause a delay in the SBHS claim processing and payment until the Department receives the non-federal match share from the unit of government EA SM Provider. If the unit of government EA SM Provider's non-federal matching share is not paid within a reasonable time, the SBHS claims will be denied.

(6) The Department will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If The Department has previously paid the SM Provider for any claim which the CMS disallows, the SM Provider must reimburse the Department the amount of the claim that the Department has paid to the SM Provider, less any amount previously paid by the unit of government EA SM Provider to the Department for purposes of reimbursing the Department for the non-federal match portion of that claim.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 41-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 88-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 4-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

410-133-0100

School Medical Provider Requirements

The School Medical (SM) Provider is responsible to:

(1) Enroll with the Division of Medical Assistance Programs (DMAP) to provide health services, and comply with all the requirements in OAR 410-120-1260 (Provider Enrollment) applicable to enrollment as a provider (see 410-133-0140 in these rules).

(2) Provide health services pursuant to the Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP) for special education under OAR chapter 581, division 15.

(3) Provide health services using medically qualified staff.

(4) Provide appropriate medical supervision by licensed medically qualified staff consistent with their licensing board requirements.

(5) Document health services in writing as required in OAR 410-133-0320.

(6) Maintain adequate medical and financial records as part of the Medicaid-eligible student's education record.

(7) Make the records required by these rules and specifically OAR 410-133-0320 available for a period of seven years.

(8) Document costs and establish a schedule of cost rates per discipline in accordance with OAR 410-133-0245.

(9) Provide access for on-site review of Medicaid-eligible students' medical records that are part of the education record.

(10) Document any changes in the individualized education program/individualized family service plan (IEP/IFSP) related to school-based health services (SBHS) covered health services.

(11) Assure that SBHS services billed are billed in accordance with OAR 410-120-0035, reflect covered health services and do not reimburse for non-covered education services or administrative activities;

(12) Retain the full payment amount for Medicaid-covered services provided.

(13) Utilize procedures to confirm that all individuals providing health services to Medicaid-eligible students, whether as employees or under contract with the SM Provider, are eligible to provide Medicaid services and are not excluded from providing Medicaid services (see OAR 410-133-0120 Medically Qualified Staff (1) and 410-133-0200 Not Covered Services (6)(m); and

(14) Comply with all applicable provisions of the DMAP General Rules, including rules related to the use of billing providers and if the SM Provider seeks to submit claims to the Department of Human Services (DHS) electronically, comply with the applicable provisions of the DHS

Electronic Data Interchange (EDI) rules, OAR 410-001-0000 et seq. (See 410-133-0090).

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

410-133-0220

Billing and Payment

(1) The School Medical (SM) Provider must bill the Department of Human Services (DHS), also termed Department, in accordance with OAR 410-120-0035; and must bill at a cost rate no greater than the education agency's cost rate for the applicable discipline reviewed and accepted by the Department based on the cost determination process described in OAR 410-133-0245.

(2) Services must be billed on a CMS-1500 or by electronic media claims (EMC) submission using only those procedure codes specified for the School-Based Health Services program (SBHS). If the SM Provider submits their claims electronically, the SM Provider must become a trading partner with the Department and comply with the requirements for Electronic Data Interchange (EDI) pursuant to OAR 410-001-0000 et seq.

(3) The Department will accept a claim up to 12 months from the date of service. See General Rules OAR 410-120-1300, Timely Submission of Claims.

(4) Third party liability. In general, the Medicaid program is the payor of last resort and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, must be used first before the Department can be billed for covered health services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For health services provided under the Individuals with Disabilities Education Act (IDEA), Medicaid pays before Oregon Department of Education (ODE) or the Educational Agency (EA), to the extent the health service is a covered service provided to a Medicaid-eligible student documented as required under these rules, and subject to the applicable reimbursement rate;

(b) If School-Based Health Services (SBHS) are provided under Title V of the Social Security Act (Maternal and Child Health Services Block Grant), Medicaid-covered Health Services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) Oregon has obtained an exemption from the Centers for Medicare and Medicaid Services (CMS) that does not require school-based SM Providers to pursue possible third party resources from private insurance companies.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

410-138-0080

Billing Policy and Codes — Babies First/Cocoon Program

(1) Payment will be made to a Babies First/Cocoon Targeted Case Management (TCM) Provider enrolled with the Department of Human Services (DHS) as a unit of government provider meeting the requirements set forth in the Provider Enrollment Agreement as the performing provider for those Case Management services provided by the employed staff person.

(2) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon DHS and the TCM Provider and constitutes agreement by the provider to comply with all applicable rules of the Division of Medical Assistance Programs, federal and state laws and regulations.

(3) The TCM Provider will bill according to OAR 410 Division 138 rules. Payments will be made through the Medicaid Management Information System (MMIS) and the TCM Provider will retain the full payment for covered services provided. The TCM Provider must have a trading partner agreement with DHS prior to submission of electronic transactions.

(4) Targeted Case Management authorized under these rules is a cost-sharing (Federal Financial Participation matching) program in which the TCM Provider, as a public entity unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rate in effect during the quarter when the TCM claims will be paid:

(a) The TCM Provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation if the public funds meet the following conditions:

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(A) The public funds are transferred to DHS from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under 42 CFR 433 Subpart B;

(b) The TCM Provider must pay its non-federal matching share to DHS in accordance with OAR 410-120-0035.

(5) Failure to timely remit the non-federal share described in subsection (4) will cause a delay in TCM claim processing and payment until DHS receives the TCM Provider's non-federal matching share. If the TCM Provider's non-federal matching share is not paid within a reasonable time, the TCM claims will be denied.

(6) DHS will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If DHS has previously paid the TCM Provider for any claim which CMS disallows, the TCM Provider must reimburse DHS the amount of the claim that DHS has paid to the TCM Provider, less any amount previously paid by the unit of government TCM Provider to DHS for purposes of reimbursing DHS the non-federal match portion for that claim.

(7) Billing criteria for this program are as follows:

(a) Use procedure code "T1016" for Babies First/Cocoon — Targeted Case Management. Maximum billing for the T1016 procedure code is one time per day per client. One of the three activities listed below must occur in order to bill:

(A) Screening;

(B) Assessment;

(C) Intervention;

(b) Any place of service (POS) is valid;

(c) Prior authorization is not required;

(d) The provider must use Diagnosis Code "V201."

(8) Duplicate billings are not allowed and duplicate payments will be recovered. Services will be considered as duplicate if the same services are billed by more than one entity to meet the same need. Medical services must be provided and billed separately from Case Management Services.

(9) A unit of service can only be billed once under one procedure code, under one provider number.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

410-138-0380

Billing Policy and Codes — HIV Program

(1) Payment will be made to an HIV Targeted Case Management Provider enrolled with the Department of Human Services (DHS) as a unit of government provider meeting the requirements set forth in the Provider Enrollment Agreement as the performing provider for those Case Management services provided by the employed staff person.

(2) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon, DHS and the TCM Provider and constitutes agreement by the provider to comply with all applicable rules of the Division of Medical Assistance Program, federal and state laws and regulations.

(3) The TCM Provider will bill according to OAR 410 Division 138 rules. Payments will be made through the Medicaid Management Information System (MMIS) and the TCM Provider will retain the full payment for covered services provided. The TCM Provider must have a trading partner agreement with DHS prior to submission of electronic transactions.

(4) Targeted Case Management authorized under these rules is a cost-sharing (Federal Financial Participation matching) program in which the TCM Provider, as a public entity unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rate in effect during the quarter when the TCM claims will be paid:

(a) The TCM Provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation if the public funds meet the following conditions:

(A) The public funds are transferred to DHS from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under 42 CFR 433 Subpart B;

(b) The TCM Provider must pay its non-federal matching share to DHS in accordance with OAR 410-120-0035.

(5) Failure to timely remit the non-federal share described in subsection (4) will cause a delay in TCM claim processing and payment until DHS

receives the TCM Provider's non-federal matching share. If the TCM Provider's non-federal matching share is not paid within a reasonable time, the TCM claims will be denied.

(6) DMAP will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If DHS has previously paid the TCM Provider for any claim which CMS disallows, the TCM Provider must reimburse DHS the amount of the claim that DHS has paid to the TCM Provider, less any amount previously paid by the unit of government TCM Provider to DHS for purposes of reimbursing DHS the non-federal match portion for that claim.

(7) Billing criteria for this program are as follows:

(a) Use Procedure Code "T2023" for HIV — Targeted Case Management. Maximum billing for the T2023 procedure code is one time per calendar month per client. At least one of the five activities listed below must occur during the month in order to bill:

(A) Assessment;

(B) Comprehensive Care/Services Plan Development;

(C) Intervention/Implementation;

(D) Coordination/Linking of Services;

(E) Evaluation;

(b) Any Place of Service (POS) is valid;

(c) Prior Authorization is not required;

(d) Provider must use Diagnosis Code "V08" or "042."

(8) Duplicate billings are not allowed and duplicate payments will be recovered. Services will be considered as duplicate if the same services are billed by more than one entity to meet the same need. Medical services must be provided and billed separately from Case Management Services.

(9) A unit of service can only be billed once under one procedure code, under one provider number.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

410-138-0560

Billing Policy and Codes — Pregnant Substance Abusing Women and Women with Young Children

(1) Payment will be made to a Pregnant Substance Abusing Women and Women with Young Children Targeted Case Management (TCM) Provider enrolled with the Department of Human Services (DHS) as a unit of government provider meeting the requirements set forth in the Provider Enrollment Agreement as the performing provider for those Case Management services provided by the employed staff person.

(2) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon DHS and the TCM Provider and constitutes agreement by the provider to comply with all applicable rules of the Division of Medical Assistance Programs, federal and state laws and regulations.

(3) The TCM Provider will bill according to OAR 410 division 138 rules. Payments will be made through the Medicaid Management Information System (MMIS) and the TCM Provider will retain the full payment for covered services provided. The TCM Provider must have a trading partner agreement with DHS prior to submission of electronic transactions.

(4) Targeted Case Management authorized under these rules is a cost-sharing (Federal Financial Participation matching) program in which the TCM Provider, as a public entity unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rate in effect during the quarter when the TCM claims will be paid.

(a) The TCM Provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation if the public funds meet the following conditions:

(A) The public funds are transferred to DHS from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under 42 CFR 433 Subpart B;

(b) The TCM Provider must pay DHS its non-federal matching share in accordance with OAR 410-120-0035;

(5) Failure to timely remit the non-federal share described in subsection (4) will cause a delay in TCM claim processing and payment until DHS receives the TCM Provider's non-federal matching share. If the TCM Provider's non-federal matching share is not paid within a reasonable time, the TCM claims will be denied.

(6) DMAP will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If DMAP has previously paid the TCM

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Provider for any claim which CMS disallows, the TCM Provider must reimburse DMAP the amount of the claim that DMAP has paid to the TCM Provider, less any amount previously paid by the unit of government TCM Provider to DMAP for purposes of reimbursing DMAP the non-federal match portion for that claim.

(7) Billing criteria for this program are as follows:

(a) Use procedure code “T2023” for Pregnant Substance Abusing Women with Young Children — Targeted Case Management. Maximum billing for the T2023 procedure code is one time per calendar month per client. One of the three activities listed below must occur in order to bill:

- (A) Screening;
- (B) Assessment;
- (C) Intervention;
- (b) Any place of service (POS) is valid;
- (c) Prior authorization is not required;
- (d) Provider must use Modifier Code “HF” and Diagnosis Code “V6141.”

(8) Duplicate billings are not allowed and duplicate payments will be recovered. Services will be considered as duplicate if the same services are billed by more than one entity to meet the same need. Medical services must be provided and billed separately from Case Management Services.

(9) A unit of service can only be billed once under one procedure code, under one provider number.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

410-138-0680

Payment, Methodology, and Billing Instructions and Codes — Federally Recognized Tribal Governments in Oregon

(1) Payment for case management services under the plan must not duplicate payments made to public agencies or private entities under other program authorities for this same purpose. Targeted Case Management (TCM) services may not be reimbursed under this rule if the services are case management services funded by Title IV and XX of the Social Security Act, and federal and or state funded parole and probation, or juvenile justice programs.

(2) Payment Methodology for Tribal TCM: For the purposes of these TCM rules, “Unit” is defined as a month. A unit consists of at least one documented contact with the Client (or other person acting on behalf of the Client) and any number of documented contacts with other individuals or agencies identified through the case planning process.

(3) Payment for Tribal TCM services will be made using a monthly rate based on the total average monthly cost per Client served by the TCM Provider during the last fiscal year for which audited financial statements have been filed with the Department of Human Services (Department). The costs used to derive the monthly Tribal TCM rate will be limited to the identified costs divided by the number of Clients served. Tribal TCM Provider costs for direct and related indirect costs that are paid by other Federal or State programs must be removed from the cost pool. The cost pool must be updated, at a minimum, on an annual basis using a provider cost report. The rate is established on a prospective basis. In the first year, the rate will be based on estimates of cost and the number of Clients served. For subsequent years, the rate will be based on actual eligible TCM costs from the previous year. A cost report must be submitted to the Department at the end of each state fiscal year (at a minimum), and will be used to establish a new rate for the following fiscal year.

(4) Payment will be made to a Tribal TCM organization enrolled with the Department of Human Services (DHS) as a unit of government provider meeting the requirements set forth in the Provider Enrollment Agreement as the performing provider for those Tribal TCM Case Management services provided by the employed staff person.

(5) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon DHS and the TCM Provider and constitutes agreement by the provider to comply with all applicable rules of the Division of Medical Assistance Programs, federal and state laws and regulations.

(6) The TCM Provider will bill according to OAR 410 Division 138 rules. Payments will be made through the Medicaid Management Information System (MMIS) and the TCM Provider will retain the full payment for covered services provided. The TCM Provider must have a Trading Partner Agreement with DHS prior to submission of electronic transactions.

(7) Targeted Case Management authorized under these rules is a cost-sharing (Federal Financial Participation matching) program in which the TCM Provider, as a public entity unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rate in effect during the quarter when the TCM claims will be paid:

(a) The TCM Provider’s non-federal matching share means the tribal funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, tribal funds may be considered as the State’s share in claiming federal financial participation if the tribal funds meet the following conditions:

(A) The tribal funds are transferred to DHS from a tribal entity that is a unit of government;

(B) The tribal funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under 42 CFR 433 Subpart B;

(b) The TCM Provider must pay its non-federal matching share to DHS in accordance with OAR 410-120-0035.

(8) Failure to timely remit the non-federal share described in subsection (4) will cause a delay in TCM claim processing and payment until DHS receives the TCM Provider’s non-federal matching share. If the TCM Provider’s non-federal matching share is not paid within a reasonable time, the TCM claims will be denied.

(9) Billing criteria for this program are as follows:

(a) Use procedure code “T1017” for Federally Recognized Tribal Government — Targeted Case Management. One of the activities listed below must occur in order to bill. Maximum billing for the T1017 procedure code is one time per month per client:

- (A) Assessment;
- (B) Case Planning;
- (C) Case Plan Implementation;
- (D) Case Plan Coordination;
- (E) Case Plan Reassessment;

(b) Any place of service (POS) is valid;

(c) Prior authorization is not required;

(d) Appropriate Diagnosis Code and Modifier must be used.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

410-138-0740

Provider Organizations — Early Intervention/Early Childhood Special Education Targeted Case Management

(1) Qualifications of EI/ECSE TCM Providers: TCM Providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2005 EI/ECSE, and must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be a sub-contractor with such a contractor, and must meet the following criteria:

(a) Demonstrated capacity (including sufficient number of staff) to provide EI/ECSE TCM services;

(b) Demonstrated Case Management experience in coordinating and linking such community resources as required by the target population;

(c) Demonstrated experience with the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) Capacity to document and maintain individual case records in accordance with state and federal requirements, including requirements for recordkeeping in OAR 410-120-1360, and confidentiality requirements in the Individuals with Disabilities Education and Improvement Act, ORS 192.518 – 192.524, 179.505, and 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable;

(g) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(h) Be enrolled as an EI/ECSE TCM Provider with the Division of Medical Assistance Programs (DMAP)

(2) In addition to the requirements in subsection (1) of this rule, the EI/ECSE TCM Provider must either be a governmental entity or a sub-contractor of a government entity. However, the EI/ECSE TCM Provider public entity unit of government is solely responsible for providing the EI/ECSE TCM Provider’s share from public funds for purposes of OAR 410-138-0780 of this rule. If the EI/ECSE TCM Provider is a subcontractor of a governmental entity, the governmental entity is responsible to make the public fund payments.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

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410-138-0780

Payment, Payment Methodology, and Billing Instructions and codes — Early Intervention/Early Childhood Special Education (EI/ECSE) Targeted Case Management (TCM)

(1) Payment for EI/ECSE TCM services, under these rules, will not duplicate payments made to public or private entities under other program authorities for this same purpose.

(2) Payment Methodology for EI/ECSE Targeted Case Management: Payment for Targeted Case Management will be based on a monthly encounter rate.

(a) The rate for reimbursement of the case management services is computed as follows. Compute the annual case manager salary and fringe benefits, plus other operating cost including travel, supplies, telephone, and occupancy cost, plus direct supervisory cost, plus average indirect administrative cost of provider organization; that will equal the total annual cost per case manager. Then divide by 12; that will equal the monthly cost per case manager. Then divide by the number of children to be served during the month, that will equal the total monthly cost per child;

(b) The total cost, per case manager, is the sum of the case manager's salary, direct supervisory costs, indirect administrative costs of the provider organization and other operating costs such as travel, supplies, occupancy, and telephone usage. Dividing the statewide average cost, per case manager, by twelve (12) months yields the average monthly cost per case manager. Dividing the monthly cost, per case manager, by the number of children to be served during the month results in the total monthly costs per child. This is the encounter rate to be used for the monthly billing whenever a Medicaid eligible client receives a TCM service during that month.

(3) Payment will be made to the enrolled Targeted Case Management Organization as the performing provider for those services provided by the employed staff person.

(4) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon, Department of Human Services (DHS) and the TCM provider and constitutes agreement by the provider to comply with all applicable rules of the Medical Assistance Program, federal and state laws or regulations.

(5) The TCM provider will bill according to OAR 410 division 138 rules. Payments will be made through the Medical Management Information System (MMIS).

(6) Targeted Case Management for TCM Provider organizations certified as eligible to enroll under OAR 410-138-0740 is a cost-sharing (Federal Financial Participation matching) program. In addition to the requirements set forth in subsections (1) through (5) of this rule, and pursuant to 42CFR433.10, DHS may monthly, but will no less than quarterly, invoice the governmental TCM provider or the TCM Provider's responsible governmental entity for their non-federal matching share based on the current Federal Medical Assistance Percentage (FMAP) rate. The governmental TCM provider or its responsible governmental entity shall pay the amount stated in the invoice within 30 days of the date of the invoice.

(a) The TCM provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42CFR433.51, public funds may be considered as the State's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to DHS from public agencies; and, the public funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds;

(B) The public funds transferred to DHS may not be derived by the governmental entity from donations or taxes that would not otherwise be recognized as the non-federal share under 42 CFR 433 Subpart B;

(b) The TCM provider's non-federal matching share shall be based on the current Federal Medical Assistance Percentage (FMAP) rate for Oregon provided annually by the Centers for Medicare and Medicaid Services. This percentage can vary each federal fiscal year. The DHS invoice shall be based on the FMAP in effect at the time of the State's expenditure to the TCM provider;

(c) The governmental TCM provider or its responsible governmental entity shall submit to the Division of Medical Assistance Programs (DMAP) an original signed document certifying that the public funds transferred to DMAP (for the non-federal matching share) under this rule are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds, and that the transferred funds are not derived from donations or taxes that would not otherwise be recognized as the non-federal share under 42 CFR 433 Subpart B.

(7) Failure to timely remit the non-federal share described in subsection (6) or failure to comply with the public funds requirements of subsection (6) will constitute an overpayment, and will make the provider subject to overpayment recoupment or other remedy pursuant to DMAP General Rules, OAR 410-120-1400 through 410-120-1685. Failure to comply with the public funds requirements in this rule may result in termination of the TCM provider enrollment agreement.

(8) Billing criteria for this program is as follows:

(a) The procedure code to be used is "T2023" for Early Intervention/Early Childhood Special Education — Targeted Case Management. One of the activities listed below must occur in order to bill. Maximum billing code is one time per month per client:

(A) Intake and Needs Assessment;

(B) Plan of Care: Development of the Targeted Case Management Plan Coordinated with the Individual Family Service Plan (IFSP);

(C) Service Coordination and Monitoring;

(D) Reassessment and Transitioning Planning.

(b) Any place of service (POS) is valid;

(c) Prior authorization is not required;

(d) Diagnosis Code "V62.3" must be used.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06,

cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Breast and Cervical Cancer Program.

Adm. Order No.: PH 9-2008

Filed with Sec. of State: 6-16-2008

Certified to be Effective: 6-16-08

Notice Publication Date: 5-1-2008

Rules Adopted: 333-010-0100, 333-010-0105, 333-010-0110, 333-010-0115, 333-010-0120, 333-010-0125, 333-010-0130, 333-010-0135, 333-010-0140, 333-010-0145, 333-010-0150, 333-010-0155, 333-010-0160, 333-010-0165, 333-010-0170, 333-010-0175, 333-010-0180, 333-010-0185, 333-010-0190, 333-010-0195

Subject: The Department of Human Services, Public Health Division is permanently adopting rules to facilitate administration of the Breast and Cervical Cancer Program.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-010-0100

Description of the Breast and Cervical Cancer Program

The Breast and Cervical Cancer Program (BCCP) is a federal screening and early detection program administered by the Department of Human Services to provide screening and diagnostic services to eligible Oregonians statewide. The Breast and Cervical Cancer Program provides coverage for screening and diagnostic services to Oregonians with family incomes up to 250 percent of the Federal Poverty Level through a contract network of qualified providers. These rules (OAR 333-010-0100 through 333-010-0195) apply only to providers who have an approved medical services agreement to provide screening and diagnostic services through this program. The program is limited to a finite source of funds which may restrict availability of services on an annual basis.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0105

Definitions

(1) "Ancillary provider" means a provider that performs services beyond the scope of an enrolling provider. Ancillary providers may include laboratories, imaging centers, surgeons and surgical facilities, and hospitals.

(2) "Agency number" means the administrative number assigned to the service provider by the Office of Family Health (OFH) for identification as a BCCP provider.

(3) "Approved medical services agreement" means the completed Breast and Cervical Cancer Program agreement, submitted to and approved by the Office of Family Health.

(4) "BCCM" means the Breast and Cervical Cancer Medical Program. ORS 414.534, 414.536.

(5) "BCCP" means the Oregon Breast and Cervical Cancer Program.

(6) "BCCP Provider Network" means the combination of all contracted BCCP providers, including enrolling and ancillary providers.

(7) "Breast and Cervical Cancer Program" means the program that provides statewide breast and cervical cancer screening and diagnostic services to eligible clients, that is administered by the Office of Family Health within the Department of Human Services.

(8) "Care coordination or case management" means that a client is provided with services, results, follow-up recommendations, and active tracking of progress towards follow-up recommendations.

(9) "CLIA" means the federal Clinical Laboratory Improvement Amendments of 1988, establishes quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results,

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and allows for certification of clinical laboratories operating in accordance with these federal amendments.

(10) "Client" means a person of any age or gender who is enrolled in and receives screening or diagnostic services from the Breast and Cervical Cancer Program.

(11) "DHS" means the Department of Human Services.

(12) "Enrolling provider" means a provider that enrolls a client into the Breast and Cervical Cancer Program, provides care coordination for the BCCP client and timely data submission to the BCCP.

(13) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for BCCP and other federally funded programs.

(14) "HIPAA" means the Health Insurance Portability and Accountability Act.

(15) "OFH" means the Office of Family Health, the office within the Department of Human Services that administers the Breast and Cervical Cancer Program.

(16) "Service provider" or "provider" means a licensed health care provider operating within a scope of practice, who is authorized by OFH to bill for breast and cervical cancer screening and diagnostic services for eligible BCCP clients.

(17) "Site number" means the administrative number assigned to the family planning service provider by OFH for identification of the geographic location of each BCCP provider.

(18) "Underinsured" means that insurance does not pay for preventive health exams that provide breast or cervical screening or diagnostic services, such as a mammogram or Pap smear, or that the deductible is \$500 or more.

Stat. Auth.: ORS 409.050
Stats. Implemented: 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0110

Client Eligibility

Clients must meet the following BCCP eligibility criteria:

(1) The client's income based on family size is at or below 250 percent of the Federal Poverty Level at the time of enrollment; and

(2) The client resides or declares an intent to reside in Oregon; and

(3) The client has no health insurance or is underinsured; and

(4) The client is a woman age 40 or over; or

(5) The client is a woman age 39 or below that is displaying symptoms that may indicate breast cancer, or is a man of any age that is displaying symptoms that may indicate breast cancer.

(6) Pre-authorization from the BCCP is required to determine eligibility for this population.

(7) Symptoms include:

(a) A persistent suspicious mass demonstrated over 2 Clinical Breast Exams (CBEs) at least a menstrual cycle apart; or

(b) An initial CBE demonstrating one or more of the following: bloody/serous nipple discharge, nipple scaliness, skin dimpling or retraction, or a mammogram or ultrasound that is "suspicious for malignancy", as determined by a qualified medical professional.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0115

Client Enrollment

(1) Clients are determined eligible on a self-declared basis, when they submit a completed and signed BCCP enrollment form at the clinic site at the time of service.

(2) Eligibility is effective for one year unless a client justifiably needs to begin a second breast or cervical cycle, as defined in the program manual, before the end of one year. Justifications include:

(a) The presence of new symptoms; or

(b) The necessity of short-term follow-up, as defined in the program manual.

(3) If breast or cervical services are justifiably initiated again before the end of one year, then eligibility will automatically extend through the end of that cycle, even if the cycle lasts into a new year.

(4) BCCP providers must keep a signed enrollment form on file at the clinic for a minimum of four years. Clients enrolled into the program who are found ineligible will be disenrolled.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0120

Covered Services

(1) BCCP covers screening and diagnostic services specific to breast and cervical cancer.

Contracted providers will only be reimbursed for services related to breast and cervical cancer screening and diagnosis.

(2) Screening and diagnostic services include, but are not limited to:

(a) For breast cancer, both a clinical breast examination and a mammogram;

(b) For cervical cancer, both a pelvic examination and a Pap smear; and

(c) Laboratory tests and medical procedures necessary for detection and diagnosis of breast and cervical cancer.

(3) The BCCP Program Manual includes a complete list of covered services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0125

Excluded Services

(1) Services and laboratory tests not directly related to breast and cervical cancer screening and diagnosis are not covered by BCCP for any eligible client. If the client accepts financial responsibility for a non-covered service that is received during a visit, payment arrangements are between the provider and the client.

(2) No payment will be made for any expense incurred for any of the following services or items:

(a) Treatment for cancer or pre-cancerous conditions;

(b) Testing for sexually transmitted infections; or

(c) Any other medical service or laboratory tests whose primary purpose is for a reason other than breast or cervical cancer screening or diagnostic testing.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0130

Standards of Care for Breast and Cervical Cancer Screening and Diagnostic Services

Participating BCCP providers must agree to provide screening and diagnostic services according to the following standards:

(1) Informed Consent. The client's decision to participate in and consent to receive breast and cervical cancer screening and diagnostic services must be voluntary and without bias or coercion.

(a) The informed consent process, provided verbally and supplemented with written materials, must be presented in a language the client understands.

(b) Consent must be obtained from the individual client receiving screening and diagnostic services.

(2) Confidentiality. Services must be provided in a manner that respects the privacy and dignity of the individual.

(a) Providers must inform clients that services and medical records will be kept confidential.

(b) Records cannot be released without written client consent, except as required by law, or otherwise permitted by the Health Insurance Portability and Accountability Act (HIPAA).

(3) Linguistic and Cultural Competence. All services, support and other assistance must be provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of the individuals who are receiving services, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program.

(a) All persons providing interpretation services must adhere to confidentiality guidelines.

(b) The provider must make interpretation services available to all clients needing or requesting such assistance at no cost to the client. The provider must notify clients in need of interpretation services of the availability of such services in accordance with the Civil Rights Act of 1964.

(c) The provider must assure the competency of language assistance provided to limited English proficiency clients by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services, unless requested by the client.

(d) Provider shall make available easily understood client related materials and post signage in the languages of groups commonly encountered in the service area.

(e) All print, electronic, and audiovisual materials must be appropriate according to the client's language and literacy level. Providers must accommodate a client's request for alternate formats.

(4) Access to Care. Services covered by BCCP must be provided without cost to eligible clients. Providers must inform clients of the scope of services available through the program.

(a) Although not covered by BCCP, treatment and supplies for pre-cancerous, cancerous conditions, and sexually transmitted infections must be available at the site, or by referral.

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(b) Clients in need of additional medical services beyond the scope of the BCCP provider network must be provided with information about available local resources.

(c) Clients diagnosed with breast or cervical cancer, including cervical intraepithelial neoplasia (CIN) II or III, shall be screened to determine eligibility for the BCCM and enrolling providers shall facilitate the application process.

(d) All services must be provided to eligible clients without regard to marital status, race, parity, disability, or sexual orientation.

(5) Clinical and Preventive Services. The scope of breast and cervical cancer screening and diagnostic services offered to clients must include:

(a) A health history, including health risk factors and personal and family medical history as it pertains to breast and cervical cancer screening.

(b) An initial physical examination that includes a breast and pelvic exam with a Pap smear.

(c) Follow-up recommendations.

(d) Care coordination to ensure that appropriate follow-up screening, diagnostic testing and care is provided, including:

(6) An explanation of the results of the physical examination and the laboratory tests;

(7) The opportunity for questions concerning procedures, methods and results.

(8) An enrolling provider must enroll and attempt to initiate breast screening services in addition to cervical services when a client is enrolled due to breast symptoms as described in OAR 333-010-0110. All data must be submitted to the BCCP by the enrolling provider including required information about client history, original pelvic exam and Pap smear.

(9) An enrolling provider must enroll and attempt to initiate cervical screening services in addition to breast services when a client is enrolled due to cervical symptoms as described in OAR 333-010-0110 except when the client is a man. Enrolling providers must submit all data to the BCCP including required information about client history, initial clinical breast exam and mammogram.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0135

Provider Enrollment

(1) This rule applies only to providers participating in BCCP through an approved provider agreement with OFH.

(2) An individual or organization must meet applicable licensing or regulatory requirements set forth by federal and state statutes, regulations, and rules to be enrolled and to bill as a provider. In addition, all providers of services within the State of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(3) An individual or organization that is currently subject to sanctions by DHS or the federal government is not eligible for enrollment.

(4) A BCCP agency number will be issued to an individual or clinic upon:

(a) Completion of the application and submission of the required documents;

(b) The signing of the provider agreement by the provider or person authorized by the provider to bind the organization or individual to comply with these rules;

(c) Verification of licensing or certification; and

(d) Approval of the application by OFH.

(5) Issuance of an agency number establishes enrollment of an individual or organization as a provider for BCCP services.

(6) If a provider changes address, business affiliation, licensure, ownership, certification, billing agents, registered name, or Federal Tax Identification Number (TIN), OFH must be notified in writing within 30 days of the change. Failure to notify OFH of a change of TIN may result in the imposing of a fine. Changes in business affiliation, ownership, registered name, and TIN may require the submission of a new application. Payments made to providers who have not furnished such notification may be recovered.

(7) Providers of services outside the state of Oregon will be enrolled under the following conditions:

(a) The provider is appropriately licensed or certified by the provider's state;

(b) The provider lives in a state contiguous to Oregon, and is within seventy-five miles of the Oregon border.

(8) Provider termination:

(a) The provider may terminate enrollment at any time. The request must be sent to OFH in writing, via certified mail, return receipt requested. The notice shall specify the agency number to be terminated and the effective date of termination. Termination of the provider enrollment does not terminate any obligations of the provider for dates of services during which the enrollment was in effect.

(b) BCCP provider terminations or suspensions and subsequent recovery of any payments made by OFH may be for, but are not limited to, the following reasons:

(A) Breaches of the medical services agreement;

(B) Failure to comply with the statutes, regulations and policies of DHS, and federal or state regulations that are applicable to the provider;

(C) Loss of the appropriate licensure or certification.

(9) The provider is entitled to a contested case hearing to determine whether the provider's agency number will be revoked.

(10) In the event of bankruptcy proceedings, the provider must notify OFH in writing within 15 days

(11) Providers must receive information about administering the BCCP from a BCCP representative before services are initiated.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0140

Billing

(1) Only clinics providing breast and cervical cancer screening and diagnostic services pursuant to an approved medical services agreement, and who have been assigned an agency number may submit claims for BCCP services.

(2) All services must be billed by submitting claim information in the method specified by the BCCP.

(3) A primary diagnosis code is required on all claims. All billings must be coded with the most current and appropriate International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) diagnosis codes and the most appropriate Current Procedural Terminology (CPT) codes as noted in the BCCP Program Manual. Claims including primary diagnosis codes that are not in the BCCP Program Manual will not be paid.

(4) The provider must use CLIA certified laboratories for all tests whether done at the clinic site or by an outside clinic.

(5) Enrolled providers with BCCP must not seek payment from an eligible client, or from a financially responsible relative or representative of that individual, for any services covered by BCCP.

(a) A client may be billed for services that are not covered by BCCP. However, the provider must inform the client in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must document in writing that the client was provided this information and the client knowingly and voluntarily agreed to be responsible for payment. The client or client's representative must sign the documentation.

(b) Services not covered by BCCP are those outside of the scope of standard breast and cervical cancer screening and diagnosis, or those not included in the ICD-9 and CPT code lists provided in the BCCP Program Manual.

(6) Prior to submission of a claim to OFH for payment, an approved provider agreement must be in place.

(7) All claims must be submitted with data, where described in the claims section of the rules. A claim is considered a "valid claim" only when all required data is received by the BCCP.

(a) Except for services performed by a CLIA certified laboratory outside of the clinic, all billings must be for services provided within the provider's licensure or certification.

(b) Providers must submit true and accurate information when billing OFH.

(c) A claim may not be submitted prior to providing services.

(8) Diagnosis Code Requirement:

(a) A primary diagnosis code is required on all claims.

(b) Use the highest degree of specificity within ICD-9-CM codes for breast and cervical screening or diagnostic testing as defined in the program manual.

(9) No provider shall submit to OFH:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid;

(c) Any claim upon which payment has been made by another source unless the amount paid is clearly entered on the claim form;

(10) The provider must submit a billing error edit correction, or refund the amount of the overpayment, on any claim where the provider identifies an overpayment made by OFH.

(11) A provider who, after having been previously warned in writing by DHS or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to OFH for up to triple the amount of the established overpayment received as a result of such violation.

(12) Third Party Resources:

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(a) Providers must make all reasonable efforts to ensure that BCCP will be the payor of last resort with the exception of clinic or offices operated by the Indian Health Service (IHS) or individual American Indian tribes;

(b) Providers must make all reasonable efforts to obtain payment first from other resources. For the purposes of this rule "reasonable efforts" include:

(A) Determining the existence of insurance coverage or other resource by asking the client;

(B) Except in the case of the underinsured, when third party coverage is known to the provider, by any other means available:

(i) The provider must bill the third party resource;

(ii) Comply with the insurer's billing and authorization requirements.

(C) Providers are required to submit a billing error edit correction showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit a billing error edit correction within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery or sanction.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0145

Claims and Data Submission

(1) In addition to submitting standard claims information, enrolling providers are required to submit client data in order to receive payment for the claim. The data is used to collect information pertaining to breast and cervical cancer prevention, diagnosis, and treatment and is used by the National Breast and Cervical Cancer Early Detection Program and the BCCP primarily to monitor the delivery of services and clinical outcomes of the program.

(2) Although data requirements may require more information than necessary for payment of a specific claim, all related fields must be completed and submitted.

(3) Data requirements for enrolling providers and ancillary providers are as follows:

(a) Enrolling providers must provide required information on the Enrollment Form, Breast Tracking Form and the Cervical Tracking Form, as defined by the program in the latest version of the BCCP Program Manual.

(b) Ancillary providers must provide results of services to enrolling providers. Ancillary providers are not required to provide data to the BCCP directly.

(4) If a provider terminates the medical services agreement data are still required to be submitted through the completion of each client's cycle.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0150

Timely Submission of Claims and Data

(1) All claims for services must be submitted within 12 months of the date of service.

(2) Errors causing rejection of any claim must be resolved within 12 months of the date of service. Claims older than 12 months will not be paid, except as provided for in section (3) of this rule.

(3) When OFH has made an error that caused the provider not to be able to bill within 12 months of the date of service, then the claim may be submitted to OFH. The error must be confirmed by OFH.

(4) Client data not related to payment of the claim may be updated or corrected at any time after the date of service.

(5) Ancillary providers must provide results of services to enrolling providers within 14 calendar days from the date of service.

(6) Enrolling providers must provide the BCCP with enrollment and eligibility information immediately or within five calendar days from the date of enrollment. All other data must be submitted within 90 days from the date of enrollment. In the event that a case requires additional diagnostic procedures that exceed 90 days from the date of enrollment, the data must be submitted immediately upon receipt.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0155

Payment

(1) OFH will make payment only to providers that have a medical services agreement with the BCCP and are billing for an eligible client.

(2) The BCCP reimbursement amount will be up to the Medicare reimbursement rate for the Portland metropolitan area for BCCP approved CPT codes, on a fee-for-service basis.

(3) Federally qualified health centers or rural health centers are not paid at their Prospective Payment System (PPS) rate; they will receive the Medicare reimbursement rate for BCCP approved CPT codes, on a fee-for-service basis.

(4) OFH payments for BCCP provider services, unless in error, constitute payment in full.

(5) OFH will not make payment on claims that have been assigned, sold, or otherwise transferred, or on which a provider of billing services receives a percentage of the amount billed or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0160

Requirements for Financial, Clinical and Other Records

(1) OFH is responsible for analyzing and monitoring the operation of BCCP and for auditing and verifying the accuracy and appropriateness of payment, utilization of services, the quality of care, and access to care. The provider shall:

(a) Develop and maintain adequate financial and clinical records and other documentation which supports the services for which payment has been requested. Payment will be made only for services that are adequately documented.

(b) All medical records must document the service provided, primary diagnosis code for the services, the date on which the service was provided, and the individual who provided the services. Patient account and financial records must also include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. The records must be accurate and in sufficient detail to substantiate the data reported.

(2) Clinical records must sufficiently document that the client's services were primarily for breast or cervical cancer screening or diagnosis of breast or cervical cancer. The client's record must be annotated each time a service is provided and signed or initialed by the individual who provided the service or must clearly indicate the individual who provided the service. Information contained in the record must meet the standards of care for breast and cervical cancer screening and diagnosis, and must be appropriate in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation set forth in this rule.

(3) The provider must have policies and procedures to ensure the maintenance of the confidentiality of medical record information. These procedures ensure that the provider may release such information in accordance with federal and state statutes, ORS 179.505, 411.320, 45 CFR 205.50.

(4) The provider must retain clinical, financial and other records described in this rule for at least four years from the date of last activity.

(5) Upon written request from OFH, DHS, the Oregon Department of Justice Medicaid Fraud Unit, the Oregon Secretary of State, or their authorized representatives (Requestor), the provider must furnish requested documentation, without charge, immediately or within the time-frame specified in the written request. Copies of the documents may be furnished unless the originals are requested. At their discretion, representatives of the Requestor may review and copy the original documentation in the provider's place of business. Upon the written request of the provider, the Requestor may, at their sole discretion, modify or extend the time for provision of such records if, in the opinion of OFH, good cause for such extension is shown. Factors used in determining whether good cause exists include:

(a) Whether the written request was made in advance of the deadline for production;

(b) If the written request is made after the deadline for production, the amount of time elapsed since that deadline;

(c) The efforts already made to comply with the request;

(d) The reasons the deadline cannot be met;

(e) The degree of control that the provider had over its ability to produce the records prior to the deadline; and

(f) Other extenuating factors.

(6) Access to records, inclusive of medical charts and financial records, does not require authorization or release from the client if the purpose of such access is to:

(a) Perform billing review activities;

(b) Perform utilization review activities;

(c) Review quality, quantity and services provided;

(d) Facilitate payment authorization and related services;

(e) Investigate a client's fair hearing request;

(f) Facilitate investigation by DHS;

(g) Where review of records is necessary to the operation of the program.

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(7) Failure to comply with requests for documents and within the specified time-frames means that the records subject to the request may be deemed by DHS not to exist for purposes of verifying appropriateness of payment, medical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and accordingly subjects the provider to possible denial or recovery of payments made by DHS, or to sanctions.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0165

Compliance with Federal and State Statutes

(1) Submission of a claim for medical services or supplies provided to a BCCP client shall be deemed a representation by the medical provider to OFH of the medical provider's compliance with the applicable sections of the federal and state statutes referenced in this rule:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) Title II and Title III of the Americans with Disabilities Act of 1991;

(c) Title VI of the Civil Rights Act of 1964;

(d) 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories).

(2) Providers are required to comply with HIPAA regarding the confidentiality of client records.

(3) CLIA requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered under CLIA to be a laboratory.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0170

Denial or Recovery of Reimbursement Resulting from Review or Audit

(1) OFH's staff, contractor or auditor may review a claim for assurance that the specific medical service was provided in accordance with the program's policies and rules and the generally accepted standards of a provider's scope of practice or specialty.

(2) Payment may be denied or subject to recovery if review or audit determines the service does not meet the program's policies, rules or the Standards of Care for Breast and Cervical Cancer Screening and Diagnostic Services set forth in OAR 333-010-0130.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0175

Recovery of Overpayments to Providers Resulting from Review or Audit

(1) When OFH determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery:

(a) To determine the overpayment amount, OFH may use a statistically valid random sampling, with sufficient sample size allowing a confidence interval of 95 percent.

(b) After OFH determines an overpayment amount by the random sampling method set forth in section (1) of this rule, the provider may request a 100 percent audit of all billings submitted to OFH for breast and cervical cancer screening and diagnostic services provided during the period in question. If a 100 percent audit is requested:

(A) Payment and arrangement for a 100 percent audit is the responsibility of the provider requesting the audit; and

(B) The audit must be conducted by a certified public accountant that is knowledgeable about the Oregon Administrative Rules covering the payments in question, and must be conducted within 120 calendar days of the request to use such audit in lieu of OFH's random sample.

(2) The amount of the review or audit overpayment to be recovered:

(a) Will be the entire amount determined or agreed to by OFH;

(b) Is not limited to amounts determined by criminal or civil proceedings; and

(c) Will include interest to be charged at allowable State rates.

(3) OFH will deliver to the provider by registered or certified mail or in person a request for repayment of the overpayment and the documentation to support the alleged amount.

(4) If the provider disagrees with OFH's determination or the amount of overpayment the provider may appeal the decision by requesting a contested case hearing:

(a) A written request for hearing must be submitted to OFH by the provider within 30 calendar days of the date of the decision affecting the provider. The request must specify the areas of disagreement.

(b) Failure to request a hearing or administrative review in a timely manner constitutes acceptance by the provider of the amount of the overpayment.

(5) The overpayment is due and payable 30 calendar days from the date of the decision by OFH:

(a) An additional 30 day grace period may be granted the provider upon request to OFH;

(b) A request for a hearing does not change the date the repayment of the overpayment is due.

(6) OFH may extend the reimbursement period or accept an offer of repayment terms. Any change in reimbursement period or terms must be made in writing by OFH.

(7) If the provider refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, OFH may:

(a) Recoup future provider payments up to the amount of the overpayment; or

(b) Pursue civil action to recover the overpayment.

(8) As the result of a hearing the amount of the overpayment may be reduced in part or in full.

(9) OFH may, at any time, change the amount of the overpayment upon receipt of additional information. Any changes will be verified in writing by OFH. Any monies paid to OFH that exceed an overpayment will be refunded to the provider.

(10) If a provider is terminated or sanctioned for any reason, OFH may pursue civil action to recover any amounts due and payable to BCCP.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0180

Provider Sanctions

The following are conditions that may result in the imposition of a sanction on a provider.

(1) Basis for Sanction:

(a) Conviction of a provider of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws (or entered a plea of nolo contendere);

(b) Conviction of fraud related to any federal, state, or locally financed health care program;

(c) Conviction of interference with the investigation of health care fraud;

(d) Conviction of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(e) Failure to comply with the state and federal statutory requirements set forth in OAR 333-010-0165;

(f) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity, the provider either:

(A) Had a health care license suspended or revoked, or has otherwise lost such license; or

(B) Surrendered the license while a formal disciplinary proceeding was pending before a licensing authority.

(g) Suspension or exclusion from participation in a federal or state health care program for reasons related to professional competence, professional performance, or other reason;

(h) Improper billing practices, including billing for excessive charges or visits;

(i) Failure to furnish services as required by law or contract with the OFH, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the client;

(j) Failure to supply requested information on subcontractors and suppliers of goods or services;

(k) Failure to supply requested payment information;

(l) Failure to grant access to facilities or provide records upon request of OFH or a designated Requestor;

(m) Receiving payments for services provided to persons who were not eligible;

(n) Establishing multiple claims using procedure codes that overstate or misrepresent the level, amount or type of health care provided;

(o) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate clinical or other records that document the medical appropriateness, nature, and extent of the health care provided;

(p) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate financial records that document charges incurred by a client and payments received from any source;

(q) Failure to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rule, or regulation;

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(r) Submission of claims or written orders contrary to generally accepted standards of medical practice;

(s) Submission of claims for services that exceed that requested or agreed to by the client or the responsible relative or guardian or requested by another medical practitioner;

(t) Breach of the terms of the medical services agreement;

(u) Failure to correct deficiencies in operations after receiving written notice of the deficiencies from OFH;

(v) Submission of any claim for payment for which payment has already been made by OFH; or

(w) Provision of or billing for services provided by ineligible or unsupervised staff.

(2) A provider who has been suspended or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, shall not submit claims for payment, either personally or through claims submitted by any billing provider or other provider, for any services or supplies provided under BCCP, except those services provided prior to the date of suspension or termination.

(3) When the provisions of section (2) of this section are violated, OFH may suspend or terminate the provider who is responsible for the violation.

(4) Provider sanctions will be imposed at the discretion of DHS or the administrator of the office whose budget includes payment for the services involved.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0185

Provider Appeals

A provider may appeal certain decisions affecting the provider made by OFH. There are two levels of appeal. Level 1 is a reconsideration on a claim. Level 2 is a contested case hearing.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0190

Provider Appeals (Level 1) — Claims Reconsideration

A provider disputing OFH's claim decision may request reconsideration. The provider must submit the request in writing to OFH. The request must include the reason for the dispute, and any information pertinent to the outcome of the dispute. OFH will complete an additional review and respond back to the provider in writing. If the provider is not satisfied with the review, the provider may request a contested case hearing.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

333-010-0195

Provider Appeals (Level 2) — Contested Case Hearing

Contested case hearings will be held in accordance with ORS 183.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 9-2008, f. & cert. ef. 6-16-08

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Rule Caption: Emergency Medical Technicians.

Adm. Order No.: PH 10-2008

Filed with Sec. of State: 6-16-2008

Certified to be Effective: 6-16-08

Notice Publication Date: 11-1-2007

Rules Adopted: 333-265-0012, 333-265-0014, 333-265-0016, 333-265-0018, 333-265-0022, 333-265-0023, 333-265-0180, 333-265-0190

Rules Amended: 333-265-0000, 333-265-0010, 333-265-0020, 333-265-0025, 333-265-0030, 333-265-0040, 333-265-0050, 333-265-0060, 333-265-0070, 333-265-0080, 333-265-0090, 333-265-0100, 333-265-0110, 333-265-0140, 333-265-0150, 333-265-0160, 333-265-0170

Rules Repealed: 333-265-0120, 333-265-0130

Subject: The Oregon Department of Human Services, Public Health Division is permanently adopting, amending, and repealing specified Oregon Administrative Rules — OAR chapter 333, division 265. Changes to these rules address requirements for training and certification of Certified First Responders and Emergency Medical Technicians (EMTs), and update assessed fees.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-265-0000

Definitions

(1) "Ambulance Service" means any person, governmental unit, corporation, partnership, sole proprietorship, or other entity that operates ambulances and holds itself out as providing pre-hospital care or medical transportation to sick, injured or disabled persons.

(2) "Business day" is any day, Monday through Friday, from 8:00 a.m. to 5:00 p.m., except legal state holidays.

(3) "Certified First Responder" means a person who has successfully completed a First Responder training course approved by the Division and:

(a) Has been examined and certified as a First Responder by an authorized representative of the Division to perform basic emergency and non-emergency care procedures; or

(b) Has been otherwise designated as a First Responder by an authorized representative of the Division to perform basic emergency and non-emergency care procedures.

(4) "Certifying officer" is a person who is responsible for conducting an Emergency Medical Technician (EMT) practical examination in a manner consistent with the standards of the National Registry for EMTs and the Division.

(5) "Clinical Education (Clinical)" means those hours of the curriculum that synthesize cognitive and psychomotor skills and are performed under a preceptor.

(6) "Continuing Education" means education required as a condition of certification under ORS 682 to maintain the skills necessary for the provision of competent pre-hospital care. Continuing education does not include attending EMS related business meetings, EMS Exhibits or Trade Shows.

(7) "Didactic Instruction" means the delivery of primarily cognitive material through lecture, video, discussion, and simulation by program faculty.

(8) "Direct Visual Supervision" means that a person qualified to supervise is at the patient's side to monitor the EMT in training.

(9) "Division" means the Public Health Division, Emergency Medical Services and Trauma Systems Program, within the Department of Human Services.

(10) "Emergency Care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of the ill, injured or disabled; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in pre-hospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(11) "EMS" means Emergency Medical Services.

(12) "EMS Medical Director" has the same meaning as "Supervising Physician" in ORS 682.025.

(13) "Emergency Medical Services (EMS) Agency" means any person, partnership, corporation, governmental agency or unit, sole proprietorship or other entity that utilizes emergency medical technicians or certified First Responders to provide pre-hospital emergency or non-emergency care. An emergency medical services agency may be either an ambulance service or a nontransporting service.

(14) "Emergency Medical Technician (EMT)" means a person who has received formal training in pre-hospital and emergency care and is state-certified to attend to any ill, injured or disabled person. Police officers, fire fighters, funeral home employees and other personnel serving in a dual capacity, one of which meets the definition of "emergency medical technician" are "emergency medical technicians" within the meaning of ORS chapter 682.

(15) "EMT-Basic" means a person who completes an EMT-Basic course as prescribed by these rules and is certified by the Division.

(16) "EMT-Intermediate" means a person who completes an EMT-Intermediate course as prescribed by these rules and is certified by the Division.

(17) "EMT-Paramedic" means a person who completes an EMT-Paramedic course as prescribed by these rules and is certified by the Division.

(18) "Exam Evaluator" is a person who attends an EMT practical examination and who objectively observes and records each student's performance consistent with the standards of the National Registry of EMTs.

(19) "Indorsement" means the manner in which a person may obtain Oregon EMT certification when that person is certified in another state and certified with the National Registry of EMTs.

(20) "In Good Standing" means a person who is currently certified or licensed, who does not have any restrictions placed on his or her certificate or license, or who is not on probation with the certifying or licensing agency for any reason.

(21) "Non-Emergency Care" means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled

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or suffer permanent harm within the next 24-hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Oregon Medical Board in the course of providing pre-hospital care as defined by this rule.

(22) "Online Medical Supervision" means real-time direct communication by a physician who is providing direction to an EMT or certified First Responder during a patient encounter.

(23) "Patient" means an ill, injured or disabled person treated by a certified First Responder or EMT who may be transported in an ambulance.

(24) "Person" means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose, or organization of any kind and includes any receiver, trustee, assignee, or other similar representatives thereof.

(25) "Pre-hospital Care" means that care rendered by a certified First Responder or EMT as an incident of the operation of an ambulance as defined by ORS chapter 682 and that care rendered by a certified First Responder or EMT as an incident of other public or private safety duties, and includes, but is not limited to "emergency care" as defined by ORS chapter 682.

(26) "Preceptor" means a person approved by an accredited teaching institution and appointed by the EMS Agency, who supervises and evaluates the performance of an EMT student during the clinical, skills lab, and field internship phases of an EMT course. A preceptor must be a physician, physician assistant, registered nurse, or certified EMT in good standing at or above level for which the student is in training.

(27) "Psychomotor Skills (Skills)" means those patient care skills listed in the Division's Skill Performance Reference Guide, 2007 and adopted by reference.

(28) "Scope of Practice" means the maximum level of emergency or non-emergency care that an EMT may provide that is set forth by the rules adopted by the Oregon Medical Board.

(29) "Skills Lab" means those hours of the curriculum that provides the student with the opportunity to develop the skills for the level of training obtained.

(30) "Standing Orders" means the written protocols that an Emergency Medical Technician or certified First Responder follows to treat patients when direct contact with a physician is not maintained.

(31) "Successful completion" means having attended 85 percent of the didactic and skills instruction hours (or makeup sessions) and 100 percent of the clinical and field internship hours, and completing all required clinical and internship skills and procedures.

(32) "Teaching Institution" means a two-year community college or four-year degree granting college or a licensed vocational school that is accredited by the Office of Professional Technical Education, Office of Community College Services/Oregon Department of Education.

(33) "Trauma Assessment and Management" means EMT continuing education subjects that include, but are not limited to: assessment of the trauma patient; amputation injuries; chest injuries; facial injuries; fractures/dislocations; head/neck injuries; internal injuries; multi-systems injuries; soft tissue injuries; and the control of bleeding and shock.

(34) "Unprofessional Conduct" means conduct unbecoming a person certified in pre-hospital emergency and non-emergency care, or is detrimental to the best interest of the public and includes conduct as defined in ORS 682.025(19).

(a) Unprofessional conduct includes, but is not limited to:

(A) Knowing or willfully violating patient privacy or confidentiality by releasing information to persons not directly involved in the care or treatment of the patient;

(B) Illegal drug use on or off duty;

(C) Alcohol use within eight hours of going on duty or while on duty or in an on-call status;

(D) Violation of direct verbal orders from a physician who is responsible for the care of a patient;

(E) Violation of orders given by an on-line medical resource physician, whether delivered by radio or telephone;

(F) Violation of standing orders without cause and documentation;

(G) Use of invasive medical procedures in violation of generally accepted standards of the medical community;

(H) Any action that constitutes a violation of any statute, municipal code, or administrative rule that endangers the public, or other public safety officials, or other EMTs, patients, or the general public (including improper operation of an emergency medical vehicle);

(I) Instructing, causing or contributing to another individual violating a statute or administrative rule, including an EMT acting in a supervisory capacity;

(J) Participation in the issuance of false continuing education documents or collaboration therein, including issuing continuing education verification to one who did not legitimately attend an educational event;

(K) Signing-in to an educational event for a person not actually present;

(L) Knowingly assisting or permitting another certified First Responder or EMT to exceed his or her lawful scope of practice;

(M) Unlawful use of emergency vehicle lights and sirens;

(N) Providing false or misleading information to the Division, to the State EMS Committee, to the Subcommittee on EMT Certification and Discipline, to an EMS teaching institution or clinical/field internship agency;

(O) Responding to scenes in which the certified First Responder or EMT is not properly dispatched ("call-jumping"), whether in a private auto, ambulance, or other vehicle, in contravention of local protocols, procedures, or ordinances, or interfering with the safe and effective operation of an EMS system;

(P) Cheating on any examination used to measure EMS related knowledge or skills;

(Q) Assisting another person in obtaining an unfair advantage on the First Responder or EMT examinations;

(R) Defrauding the Division;

(S) Knowingly providing emergency medical care aboard an unlicensed ambulance;

(T) Violation of the terms of a written agreement with the Division or an order issued by the Division;

(U) Engaging in any sexual activities, including sexual harassment, that constitutes a crime in Oregon and that may endanger the public or a person providing emergency medical care;

(V) Arriving for duty impaired or in a condition whereby the certified First Responder or EMT is likely to become impaired through fatigue, illness, or any other cause, as to make it unsafe for the employee to begin to operate an ambulance or provide patient care;

(W) Failure to cooperate with the Division in an investigation, including failure to comply with a request for records, or a psychological, physical, psychiatric, alcohol or chemical dependency assessment; or

(X) Any violation of these rules or any law, administrative rule, or regulation governing ambulances, or certified First Responders or EMTs, or emergency medical service systems.

(b) This section does not create any new substantive violations. It is included solely to inform EMS agencies and certified First Responders or EMTs as to the conduct that the Division regards as already proscribed by the statutory definition of unprofessional conduct.

(35) "Volunteer" means a person who is not compensated for their time to staff an ambulance or rescue service, but who may receive reimbursement for personal expenses incurred.

Stat. Auth.: ORS 682.025 & 682.215

Stats. Implemented: ORS 682.017 - 682.991

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0010

Application for Approval of EMT Courses

(1) The Division is responsible for approving EMT courses.

(2) An EMT course must be offered by a teaching institution accredited by the Oregon Department of Education or the Oregon State Board of Higher Education and must meet the standards established by the Oregon Department of Education in OAR chapter 581, division 49.

(3) Notwithstanding section (2) of this rule, the Division may allow a hospital to conduct an EMT-Basic course if there is no training available at a teaching institution in a rural part of the state. A hospital that wishes to conduct an EMT-Basic course in a rural area must send a request to the Division in writing explaining why there is a need and why there is no training available in its area. The Division will inform the hospital in writing whether it has permission to conduct the EMT-Basic course.

(4) EMT courses must meet the requirements prescribed by the Division in OAR 333-265-0014.

(5) EMT courses must be taught by instructors that meet the requirements of OAR 333-265-0020.

(6) A teaching institution described in section (2) of this rule or a hospital approved by the Division under section (3) of this rule must submit an application to the Division on a form prescribed by the Division that includes all the information necessary to determine whether the course meets the Division's standards. The form must be received by the Division at least 30 business days prior to the first day of class.

(7) The Division will return an application that is incomplete to the applicant.

(8) The Division will inform an applicant in writing whether the application has been denied or approved.

(9) No teaching institution shall conduct an EMT course until the Division has approved the course.

(10) The Division may deny or revoke the approval to conduct an EMT course in accordance with ORS 183.310 through 183.550 for failure to comply with OAR chapter 333, division 265.

Stat. Auth.: ORS 682.017, 682.208

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Stats. Implemented: ORS 682.017, 682.208, 682.216
Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0630; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0030; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0012

Requirements for Conducting First Responder Courses

(1) An ambulance service, emergency medical services, or any other entity in Oregon may conduct First Responder courses that meet the requirements of OAR 333-265-0014.

(2) An entity that wants to conduct a First Responder course must submit an application to the Division on a form prescribed by the Division that includes all the information necessary to determine whether the course meets the Division's standards.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0014

EMT and First Responder Course Requirements

(1) A First Responder course must include:

(a) The Emergency Medical Services, First Responder Training Course, U.S. Dept. of Transportation, National Highway Traffic Safety Administration, 1995, incorporated by reference;

(b) Didactic and skills instruction of a least 46 hours; and

(c) Include a practical and cognitive examination

(2) An EMT-Basic Course must include:

(a) The EMT-Basic National Standard Curriculum, U.S. Dept. of Transportation, National Highway Traffic Safety Administration, 1994, incorporated by reference;

(b) Didactic and skills instruction of at least 140 hours; and

(c) Clinical education of at least eight hours in a hospital or acute care department or other appropriate clinical or acute care medical facility where the skills within an EMT-Basic scope of practice are performed under the supervision of a preceptor.

(3) An EMT-Intermediate course must include:

(a) The EMT-Intermediate curriculum, 2006, incorporated by reference;

(b) Didactic and skills instruction of at least 144 hours; and

(c) Clinical education of at least eight hours and 20 patient contacts in a hospital emergency department or medical clinic where the skills within an EMT-Intermediate scope of practice are performed under the supervision of a preceptor.

(4) An EMT-Paramedic course must include:

(a) The EMT-Paramedic National Standard Curriculum, U.S. Department of Transportation, National Highway Traffic Safety Administration, 1999, incorporated by reference;

(b) Didactic and skills instruction;

(c) Clinical education in hospital clinical areas where the skills within an EMT-Paramedic scope of practice are performed under the supervision of a preceptor; and

(d) A field internship that is described in OAR 333-265-0016.

(5) All First Responder and EMT courses must include instructions on the statutes for the State of Oregon and the regulations governing the EMT system, medical-legal issues, roles and responsibilities of certified First Responders and EMTs, and EMS professional ethics.

(6) The Division may deny or revoke course approval in accordance with the provisions of ORS 183.310 through 185.550 for failure to comply with the requirements of this section.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0016

Paramedic Field Internships

(1) A field internship is required as part of an EMT-Paramedic course.

(2) A field internship must provide a student the opportunity to demonstrate the integration of all didactic, psychomotor skills, and clinical education necessary to perform the duties of an entry-level paramedic.

(3) The student must successfully demonstrate a skill in the classroom lab or hospital clinical setting before that skill is performed and evaluated in a field internship.

(4) During a field internship a student must participate in providing care in at least 40 EMS calls with no less than 10 each in cardiac, respiratory, general medical, and trauma emergencies, and with at least 30 of the calls being advanced life support ambulance calls. All EMS calls shall be under the direct visual supervision of a preceptor. In order for a call to be accepted, the preceptor must document and verify satisfactory student performance, including application of specific assessment and treatment skills required of a certified EMT-Paramedic.

(5) For purposes of this section, "EMS call" means a pre-hospital emergency medical services response requiring patient care at the advance life support level and "ambulance call" means an advanced life support pre-hospital emergency medical services response which includes dispatch, scene response, patient care while riding in the patient compartment of an ambulance, and participating in specific assessment and treatment skills required of a certified EMT-Paramedic.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0018

Course Director Qualifications for First Responder Courses

(1) An ambulance service, emergency medical services agency, or entity that has contracted with the Division to conduct a First Responder course must have a qualified Course Director.

(2) A First Responder Course Director must:

(a) Have appropriate training and experience to fulfill the role and have the credentials that demonstrate such training and experience;

(b) Be currently certified in Oregon as an EMT-Basic or higher with three years of pre-hospital care experience and in good standing with the Division, or an EMS medical director or his or her designee;

(c) Be currently certified by the American Heart Association, American Red Cross, or a similar organization approved by the Division as a CPR instructor; and

(d) Have successfully completed one of the following:

(A) The National Association of EMS Educator Course, developed by the U.S. Department of Transportation, 2002;

(B) The National Fire Protection Association (NFPA) Fire Instructor I or Fire Service Instructor I and II programs developed by the Department of Public Safety and Standards and Training (DPSST);

(C) Have at least 40 hours of the Instructor Development Program offered by the DPSST; or

(D) A minimum of three college credits in adult educational theory and practice or vocational educational theory and practice from an accredited institution of higher learning.

(e) Have participated in a course director program offered by the Division; and

(f) Agree to participate in the course director program updates offered by the Division.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0020

Approved EMT Course Director

(1) An Oregon teaching institution conducting EMT-Basic, EMT-Intermediate or EMT-Paramedic courses must have program faculty consisting of a designated program director, course medical director, and course directors and may have guest instructors. The number of persons carrying out the responsibilities of conducting an EMT course may vary from program to program. One person, if qualified, may serve in multiple roles.

(2) A course EMS Medical Director must meet the qualifications of a supervising physician as defined in OAR 847-035-0020.

(3) A course director for a specific course must:

(a) Be an EMS Medical Director; or

(b) Hold at least the level of certification as the course being taught and be in good standing with the Division, and have at least three years of experience at that certification level or higher; and

(A) Have a certificate that is current from the American Heart Association, American Red Cross, or a similar organization approved by the Division as a CPR instructor;

(B) Have successfully completed one of the following:

(i) The National Association of EMS Educator Course, developed by the U.S. Department of Transportation, 2002;

(ii) The National Fire Protection Association (NFPA) Fire Instructor I or Fire Service Instructor I and II programs developed by the Department of Public Safety and Standards and Training (DPSST);

(iii) At least 40 hours of the Instructor Development Program offered by the DPSST; or

(iv) A minimum of three college credits in adult educational theory and practice or vocational educational theory and practice from an accredited institution of higher learning;

(C) Participated in the Course Director Program offered by the Division; and

(D) Participated in the Course Director Program updates offered by the Division.

(4) In addition to the Course Director requirements in section (3) of this rule, an EMT-Paramedic Course Director must:

(a) Be an EMS Medical Director and hold a current:

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(A) American Board of Emergency Medicine Certificate; or
(B) Advance Cardiac Life Support (ACLS) Instructor certificate and Advance Trauma Life Support certificate or equivalent as approved by the Division; or

(b) Be a certified Paramedic in good standing with the Division with at least three years of experience at the certification level and:

(A) Possess at least an associate's degree of applied science from an accredited institution of higher learning;

(B) Hold an Advance Cardiac Life Support (ACLS) Instructor certificate from the American Heart Association or equivalent that has been approved by the Division; and

(C) Hold a Basic Trauma Life Support (BTLS) Instructor certificate or equivalent that has been approved by the Division, or a Pre-hospital Trauma Life Support (PHTLS) Instructor certificate or equivalent that has been approved by the Division.

(5) A guest instructor must:

(a) Be qualified and have the expertise in the specific course subject; and

(b) Follow the course curriculum and meet the course objectives for that specific subject.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017

Hist.: HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0032; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0022

Program Administrator and Faculty Responsibilities

(1) A Program Administrator is responsible for course planning, the organizing and administration of courses, periodic review of courses, program evaluation, and continued development and effectiveness of courses.

(2) A course EMS Medical Director shall:

(a) Provide medical direction for the didactic, clinical and field internship portions of an EMT course; and

(b) Act as the ultimate medical authority regarding course content, procedures and protocols.

(3) A Course Director for a specific course:

(a) Is responsible for course planning and organizing, including scheduling lectures, coordinating and arranging clinical rotations, and field internships;

(b) Is the primary instructor, who conducts at least 50 percent of the didactic sessions, unless this requirement is waived by the Division in advance;

(c) Must ensure, if guest instructors are used, that the guest instructor presents lessons that address all objectives identified in the course curriculum for the topic being presented;

(d) Must ensure that:

(A) On the first day of class each student completes a registration form prescribed by the Division;

(B) Each student is informed that failure to complete a registration form will make them ineligible to take the certification exam; and

(C) The completed registration forms are collected and submitted to the Division within 21 days of the first day of class.

(e) Must have written documentation showing whether a student has successfully completed the course as defined in OAR 333-265-0014.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0023

First Responder and EMT Examinations

(1) In order to be a certified First Responder, a student must:

(a) Successfully complete the approved courses, including completion of all clinical and internship requirements, if applicable, and pass a practical and cognitive examination; and

(b) Submit a completed application for certification and the appropriate fee to the Division in accordance with OAR 333-265-0025.

(2) In order to be a certified EMT, a student must take and pass a cognitive and practical certification examination. Prior to taking either examination, a student must:

(a) Successfully complete the approved courses, including completion of all required clinical and internship requirements; and

(b) Submit a completed application for certification and the appropriate fee to the Division in accordance with OAR 333-265-0025.

(3) EMT-Basic and EMT-Intermediate applications for certification must be received by the Division three weeks prior to the date of the practical examination.

(4) An EMT-Paramedic application for certification must be received by the Division four weeks prior to the date of the practical examinations.

(5) The First Responder cognitive and practical examinations will be administered by an entity approved by the Division to conduct First Responder courses. An approved entity must use a Division approved cog-

nitve and practical exam. The National Registry of Emergency Medical Technicians cognitive examination for First Responders may also be used.

(6) The EMT-Basic and EMT-Intermediate practical examinations will be hosted by a teaching institution that offers EMT-Basic and EMT-Intermediate courses.

(7) The EMT-Paramedic practical examination is a National Registry of EMTs examination offered at various times during the year by the Division. An EMT-Paramedic student may take the EMT-Paramedic practical in any state that it is offered.

(8) EMT-Basic and EMT-Paramedic students must complete the cognitive examination offered by the National Registry of EMTs. The fee for this exam must be paid directly to the National Registry of EMTs.

(9) EMT-Intermediate students must complete a cognitive examination offered by the Division.

(10) The Division or the National Registry of EMTs shall establish the passing scores of all cognitive and practical certification examinations.

(a) A student who fails not more than two skill stations of the EMT-Basic practical examination, not more than three skill stations of the EMT-Intermediate practical examination, or not more than five skill stations of the EMT-Paramedic practical examination may retest those skill stations failed on the same day with no additional charge by the Division. If a skill station is failed a second time, the student must submit a re-examination fee and be scheduled for another examination to retest any skill station failed.

(b) A student who fails more than two skill stations of the EMT-Basic practical examination, more than three skill stations of EMT-Intermediate practical examination, or more than five skill stations of the EMT-Paramedic practical examination must submit a re-examination fee and be scheduled for another complete practical examination.

(c) If a student fails either the cognitive or practical examination three times, that person must successfully complete a Division approved refresher course for that specific certification level to become eligible to re-enter the certification process. Following successful completion of a refresher course, a student must re-take and pass both the cognitive and practical examination within three additional attempts.

(11) A student must pass both the cognitive and practical examinations within 24 months after the completion of the required courses.

(12) The passing results of the cognitive and practical certification examinations for each level of certification will remain valid for a 12-month period from the date the examination was successfully completed. A student not successfully completing the failed portion of an examination within that 12-month period shall be required to repeat the entire cognitive and practical examinations.

(13) A student who fails the cognitive and practical examination six times or does not complete the examination process within 24 months of the completion date of the initial required courses, must successfully complete the entire EMT course for that certification level and reapply for certification.

(14) The entity providing a cognitive examination must have a policy for the accommodation of a person with a documented learning disability.

(15) No accommodation shall be provided for a practical certification examination.

(16) EMT-Basic and EMT-Intermediate practical examinations must be attended by a Division approved:

(a) Certifying Officer that:

(A) Is certified in Oregon as at least an EMT-Basic for EMT-Basic exams and as at least an EMT-Intermediate for EMT-Intermediate level exams and in good standing with the Division; and

(B) Has completed training offered by the Division explaining the role and responsibilities of a Certifying Officer.

(b) Exam Evaluator that:

(A) Is currently certified at a level equal to or higher than the level of certification for which a student is being tested and is in good standing with the Division; and

(B) Has completed training offered by the Division explaining the role and responsibilities of an Exam Evaluator.

Stat. Auth.: ORS 682.017, ORS 682.208, & ORS 682.216

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0025

Application Process to Obtain a First Responder or EMT Certificate

(1) For any person to act as a First Responder or an EMT a certificate must be obtained from the Division.

(2) A First Responder must comply with the requirements in section (3) of this rule,

except that a First Responder must be at least 16 years of age and is not required to meet the education requirements in subsection (3)(d).

(3) An applicant for an EMT-Basic, Intermediate, or Paramedic certificate must:

(a) Complete and sign an application form prescribed by the Division certifying that the information in the application is correct and truthful;

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- (b) Meet the requirements of ORS 682.208 and these rules;
 - (c) Be at least 18 years of age;
 - (d) Be a high school graduate or equivalent, and for EMT-Paramedic certification, have an associate's degree in applied science or higher as approved by the State Board of Education and offered by Oregon's two-year community colleges or four-year colleges;
 - (e) Have successfully completed all course requirements for the level of certification being applied for;
 - (f) Consent to a criminal background check through the Law Enforcement Data System (LEDS), including a nationwide criminal record check by fingerprint identification under the authority of ORS 181.534 and 181.537 if the results of the LEDS check shows that the applicant is a "multi-state offender";
 - (g) Provide an authorization for the release of information, as necessary, from any persons or entities, including but not limited to educational institutions, employers, hospitals, treatment facilities, institutions, organizations, governmental or law enforcement agencies in order for the Division to complete the review of the application; and
 - (h) Submit a fee as set out in OAR 333-265-0030.
- (4) A person must be certified at least at the Oregon EMT-Basic level or must have a current certificate from the National Registry of EMTs before being eligible to enroll in an EMT-Intermediate or EMT-Paramedic course and apply for and take any certification examinations.
- (5) Any fee for a criminal background check through LEDS or a nationwide criminal background check shall be the responsibility of the applicant.
- (6) An applicant for an initial certification as an EMT or First Responder who completed training in a program outside Oregon and has never been certified in another state, must meet all requirements established for someone completing training in an Oregon training program, and must have passed the National Registry for EMT's cognitive examination and practical skills examination for the level that they are seeking certification and make application within 24 months from the date they completed their training program.
- (7) The Division shall return any application that is incomplete or is not accompanied by the appropriate fee.
- (8) On or after July 1, 2008, all First Responders certified prior to June 30, 2008 who wish to continue to be certified as a First Responder must apply to the Division for certification by submitting:
- (a) An application for certification as described in sections (1) through (5) of this rule;
 - (b) Documentation of initial certification and continuing education requirements for the preceding certification period; and
 - (c) Documentation of a current and valid American Heart Association Healthcare Provider CPR certification or equivalent.
- Stat. Auth.: ORS 682.017, 682.028 & 682.208
Stats. Implemented: ORS 682.017, 682.028 & 682.208
Hist.: OHD 9-2001, f. & cert. ef. 4-24-01; Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0030

Fees for the Certification and Recertification of a First Responder or EMT

- (1) The initial application fee for:
 - (a) First Responder — \$30;
 - (2) The initial application and same-day practical examination fees for EMTs:
 - (a) EMT-Basic — \$70;
 - (b) EMT-Intermediate — \$75; and
 - (c) EMT-Paramedic — \$200.
 - (3) Cognitive re-examination fees for EMT- Intermediate- \$50.
 - (4) Practical re-examination fees:
 - (a) EMT-Basic — \$30;
 - (b) EMT-Intermediate — \$50; and
 - (c) EMT-Paramedic — \$70.
 - (5) Provisional certification fee is \$25 in addition to the fee listed in sections (1) and (2) of this rule.
 - (6) Indorsement certification fees:
 - (a) First Responder — \$30;
 - (b) EMT-Basic — \$70;
 - (c) EMT-Intermediate — \$75; and
 - (d) EMT-Paramedic — \$200.
 - (7) Recertification fees:
 - (a) Certified First Responder — \$15;
 - (b) EMT-Basic — \$40;
 - (c) EMT-Intermediate — \$65; and
 - (d) EMT-Paramedic — \$120.
 - (8) As authorized by ORS 682.216, a recertification application postmarked after May 31 of the recertification year must include a \$20 late fee in addition to the recertification fee.
 - (9) An EMS agency or rescue service which utilizes volunteers to provide a majority of its services may request that the Division waive the First

Responder or EMT recertification fee for its volunteers by applying for a waiver on forms prescribed by the Division that includes:

- (a) A statement certifying that the ambulance or rescue service is unable to maintain an adequate number of volunteer First Responders or EMTs due to the required First Responder or EMT recertification fees; and
- (b) A copy of a signed agreement between the volunteer service and the volunteer First Responder or EMT is attached to the First Responder's or EMT's application for recertification specifying that the First Responder or EMT:
 - (A) Is not employed as a First Responder or EMT elsewhere;
 - (B) Will be affiliated with the volunteer service for the entire upcoming certification period;
 - (C) Will be scheduled monthly to staff the ambulance or rescue service; and
 - (D) Will immediately pay the Division the required current First Responder or EMT recertification fee if the First Responder or EMT is not scheduled monthly or is no longer affiliated with a volunteer ambulance or rescue service and wants to remain certified as a First Responder or EMT.
- (10) An Oregon-certified First Responder or EMT wishing to obtain a duplicate First Responder or EMT certificate, must submit a written request to the Division in the form required by the Division and pay a fee in the amount of \$10.
- (11) All fees established in this section are nonrefundable except that the Division may waive a subsequent examination fee for a person who fails to appear for an examination due to circumstances that are beyond the control of the applicant.
- (12) These fees are effective for any application submitted on or after the effective date of these rules.

Stat. Auth.: ORS 682.017, 682.212, 682.216

Stats. Implemented: ORS 682.017, 682.212, 682.216

Hist.: HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0017; HD 8-1995, f. & cert. ef. 11-6-95; OHD 2-1999, f. & cert. ef. 2-4-99; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0040

Certification as a First Responder or EMT

- (1) The Division will review an application for certification as a First Responder or EMT and will conduct a criminal background check.
- (2) If there are no issues that arise during the review of the application and the applicant meets all the requirements of ORS chapter 682 and these rules, the Division will grant the applicant a certificate.
- (3) If there are criminal history or personal history issues that call into question the ability of the applicant to perform the duties of a certified First Responder or EMT in accordance with ORS chapter 682 or these rules, the Division may deny the applicant on the basis of the information provided in the application, or conduct an additional investigation that may include:
 - (a) Requesting additional information from the applicant;
 - (b) Conducting a phone or in-person interview;
 - (c) Requesting that the applicant undergo a psychological, physical, alcohol or chemical dependency assessment; or
 - (d) Any combination of the actions listed in subsections (3)(a), (3)(b), or (3)(c).
- (4) Following an investigation the Division may:
 - (a) Deny the application;
 - (b) Grant the application but place the applicant on probation;
 - (c) Grant the application but place practice restrictions on the applicant; or
 - (d) Grant the application if the criminal or personal history issues were resolved through the investigation to the Division's satisfaction.
- (5) Final actions taken by the Division in denying an applicant, placing an applicant on probation, or by placing restrictions on the applicant's practice shall be done in accordance with ORS chapter 183.
- (6) Nothing in this section precludes the Division from taking an action authorized in ORS chapter 682.
- (7) The certificates of First Responders expire on June 30 of even-numbered years.
- (8) The certificates of EMT-Basics, EMT-Intermediates and EMT-Paramedics expire on June 30 of odd-numbered years.

Stat. Auth.: ORS 682.017, 682.208, 682.216

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0615; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0015; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0050

First Responder and EMT Certification by Indorsement

- (1) A person certified with another state as a First Responder, EMT-Basic, EMT-Intermediate, or EMT-Paramedic and registered with the National Registry of EMT's as a First Responder, EMT-Basic, EMT-

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Intermediate I-99, or EMT-Paramedic may apply to the Division for a certificate by indorsement..

(2) A person applying for Oregon First Responder or EMT certification by indorsement must:

(a) Complete and sign an application form prescribed by the Division accompanied by a nonrefundable fee;

(b) Submit documentation of the First Responder or EMT training which meets or exceeds the requirements for Oregon First Responder or EMT certification at the level of certification for which the person is applying;

(c) Be in good standing with the applicant's current certifying agency and with the National Registry of EMTs, if applicable; and

(d) Consent to a criminal background check in accordance with OAR 333-265-0025(3).

(3) Notwithstanding the training and other educational requirements in these rules, the Division shall certify an applicant who:

(a) If applying for EMT-Paramedic certification, has an associate's degree of applied science or higher from an accredited educational institution;

(b) Meets the physical and mental qualification required to be a First Responder or EMT in Oregon; and

(c) Does not have any criminal history or personal history issues that would prevent certification under ORS chapter 682 or these rules.

(4) An applicant applying for Oregon EMT-Paramedic certification that is currently certified in one or more states prior to July 1, 1999, and has been continuously certified in the state(s) does not need to meet the educational requirements in section (3) of this rule.

(5) The Division shall be the sole agency authorized to determine equivalency of course work presented from an out of state accredited educational institution.

(6) The Division shall return any application that is incomplete, or can not be verified.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0620; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 18-1990(Temp), f. & cert. ef. 6-19-90; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0020; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0060

EMT Provisional Certification

(1) As authorized by ORS 682.216, the Division may issue a one-time provisional EMT-Paramedic certification to an out-of-state certified EMT-Paramedic who meets the requirements in OAR 333-265-0050, except for the educational requirements in OAR 333-265-0050(3)(a); and

(a) Is in the process of obtaining an associate's degree in applied science or higher from an accredited institution of higher education.

(2) An applicant must submit:

(a) A letter of recommendation from the applicant's most recent Medical Director;

(b) A letter from an Oregon EMS agency specifying that the person shall be immediately employed or has a conditional offer of employment, whether in a paid or volunteer capacity; and

(c) A letter from the applicant's prospective EMS Medical Director stating that the EMS Medical Director will serve as his or her EMS Medical Director while being provisionally certified.

(3) The Division shall return any application that is incomplete, can not be verified, or is not accompanied by the appropriate fee. The fee will be forfeited if an application is returned as incomplete.

(4) An EMT-Paramedic with a provisional certification issued under these rules shall submit quarterly reports to the Division describing the certificate holder's progress in meeting the requirements in section (1) of this rule.

(5) An EMT-Paramedic provisional certification shall be revoked immediately if the person:

(a) Ceases active involvement in emergency medical services;

(b) Has his or her EMT scope of practice revoked or restricted by his or her EMS Medical Director; or

(c) Does not submit written documentation of the successful completion of any of the educational requirements set out in section (1) of this rule.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0070

Certification as an EMT of Any Person in Adjoining States

(1) Any person who provides pre-hospital emergency or non-emergency care in Oregon must be certified as an Oregon First Responder or EMT and function under a Division-approved EMS Medical Director.

(2) Oregon First Responder or EMT certification is not required when:

(a) Specifically exempted by ORS 682.035;

(b) An out-of-state certified EMT is transporting a patient through the state;

(c) An out-of-state certified EMT is caring for and transporting a patient from an Oregon medical facility to an out-of-state medical facility or other out-of-state location;

(d) An out-of-state certified EMT is caring for and transporting a patient originating from outside of Oregon to a medical facility or other location in Oregon; or

(e) A disaster or public health emergency has been declared under ORS chapter 401 or ORS chapter 433 and licensing provisions have been waived by the Governor.

Stat. Auth.: ORS 682.017, 682.204

Stats. Implemented: ORS 682.017, 682.204

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0625; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0025; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0080

Reportable Events; Investigations and Discipline of Certificate Holders

(1) Using a form prescribed by the Division, a certificate holder must notify the Division of the actions or events listed in section (2) of this rule. Failure to comply with the reporting requirements of this rule may result in disciplinary action against the certificate holder.

(2) Within 14 calendar days a certificate holder must notify the Division of:

(a) A disciplinary restriction placed on a scope of practice of the certificate holder by the EMS Medical Director;

(b) A legal action being filed against the certificate holder alleging medical malpractice or misconduct;

(c) A citation, arrest, formal charge, or conviction for driving under the influence, a drug related offense, sexual, violent, or property offense, or other offense against a person;

(d) Being admitted to a diversion program for DUII;

(e) Restriction or loss of driving privileges;

(f) Admission to a drug or alcohol treatment program;

(g) Admission to a mental health treatment facility;

(h) A physical disability that affects the ability of the certificate holder to meet the Functional Job Analysis, Appendix A of the 1994 EMT-Basic, National Standard Curriculum, incorporated by reference, and the certificate holder continues to respond to calls and is providing patient care; or

(i) A change in mental health which may affect a certificate holder's ability to perform as a certified First Responder or EMT.

(3) The Division may conduct an investigation of a certificate holder following notification of any of the actions or events in section (2) of this rule, or because the Division has reason to believe the certificate holder:

(a) Has used or been addicted to drugs within the past 10 years;

(b) Has been addicted to alcohol within the past 10 years;

(c) Has been convicted of theft, fraud, or any other crime of dishonesty, within the past five years;

(d) Has been involved in any judicial proceeding in which the certified First Responder or EMT is accused of a sexual or violent crime;

(e) Has been diagnosed with or may have had, within the last five years, a mental illness; or

(f) Has violated any provision in ORS 682.208 or 682.220(2).

(4) The fact that an investigation is conducted by the Division does not imply that disciplinary action will be taken.

(5) During an investigation the Division may do any of the following:

(a) Request additional information from the certificate holder;

(b) Conduct a phone or in-person interview; or

(c) Request that the certificate holder undergo a psychological, physical, psychiatric, alcohol or chemical dependency assessment.

(6) Upon completion of an investigation the Division may do any of the following:

(a) Close the investigation and take no action;

(b) Issue a letter of reprimand or instruction;

(c) Place the certificate holder on probation;

(d) Place a practice restriction on the certificate holder;

(e) Suspend the certificate holder;

(f) Revoke the certificate of the certificate holder;

(g) Enter into a stipulated agreement with the certificate holder to impose discipline; or

(h) Take such other disciplinary action as the Division, in its discretion, finds proper, including assessment of a civil penalty not to exceed \$5,000.

(7) Any disciplinary action taken by the Division will be done in accordance with ORS chapter 183.

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(8) The Division may assess the costs of a disciplinary proceeding against a certificate holder. Costs may include, but are not limited to charges for:

- (a) Costs incurred by the Division in conducting the investigation;
- (b) Costs of an examination performed pursuant to ORS 682.222(2)(k); and

(c) Attorney fees.

(9) Voluntary Surrender:

(a) A certificate holder may voluntarily surrender their certificate if a written request from the certificate holder is submitted to the Division specifying the reason for the surrender of the certificate and the Division agrees to accept the voluntary surrender.

(b) The Division may condition its acceptance of a voluntary surrender on the certificate holder agreeing not to reapply for certification, or agreeing not reapply for a specified period of time.

(10) If the Division finds that a person who voluntarily surrendered their First Responder or EMT certification had committed an act that would have resulted in the denial, suspension, or revocation of their certificate or being placed on probation while they were certified, that person may not be eligible to reinstate their certification or apply for certification at a later date.

(11) If a person's certificate is revoked they may not reapply for certification for at least two years from the date of the final order revoking the certificate.

Stat. Auth.: ORS 682.017, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.220, 682.224

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0635; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0035; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0090

Reverting to a Lower Level of EMT Certification

(1) An EMT may revert to a lower level of certification at any time during a certification period if the EMT:

(a) Submits a written request to the Division specifying the reason for the change in the certification level;

(b) Submits an application for recertification for the lower level of certification sought with the appropriate fee;

(c) Surrenders his or her current EMT certificate to the Division;

(d) Is in good standing with the Division;

(e) Adequately documents appropriate continuing education hours and courses for the certification level the individual would revert to; and

(f) Receives written approval from the Division for a change in certification level.

(2) If an EMT requests reinstatement of the higher level of certification within one year of reverting to a lower level of certification the EMT must complete the requirements specified in OAR 333-265-0100(3)(c).

(3) If an EMT requests reinstatement of the higher level of certification the EMT must complete the requirements specified in OAR 333-265-0100.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0037; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0100

Expiration, Recertification and Reinstatement of EMT Certification

(1) An applicant for recertification must:

(a) Complete and sign an application form prescribed by the Division certifying that the information in the application is correct and truthful;

(b) Meet the requirements of ORS chapter 682 and these rules;

(c) Consent to a criminal background check in accordance with OAR 333-265-0025(3);

(d) Provide an authorization for the release of information to the Division, as necessary, from any persons or entities, including but not limited to employers, educational institutions, hospitals, treatment facilities, institutions, organizations, governmental or law enforcement agencies in order for the Division to make a complete review of the application.

(e) Complete the continuing education requirements in OAR 333-265-0110; and

(f) Submit a fee set out in OAR 333-265-0030.

(2) A recertification certificate shall be valid for no more than 24 months.

(3) To reinstate an expired Oregon First Responder, EMT-Basic, EMT-Intermediate, or EMT-Paramedic certificate that has been expired for less than one year, a certificate holder must:

(a) Submit a completed application for recertification;

(b) Submit the appropriate recertification fee; and

(c) Provide evidence of completion of continuing education requirements as specified in Appendix 1, incorporated by reference, and courses

completed during the previous certification period and up to the time the application for recertification was submitted, as specified in this rule.

(4) To reinstate an Oregon First Responder, EMT-Basic, EMT-Intermediate, or EMT-Paramedic certificate that has been expired for more than one year, but less than two years, a certificate holder must submit a completed application for certification with the appropriate fee and successfully complete a Division approved reinstatement program described in these rules.

(a) Reinstatement program for a certified First Responder:

(A) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(B) Complete the First Responder refresher course approved by the Division;

(C) Pass the First Responder cognitive and practical examinations within three attempts, including a same-day re-examination; and

(D) Complete the above listed program requirements within six months of applying for reinstatement.

(b) Reinstatement program for an EMT-Basic:

(A) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division-approved equivalent CPR course completion document;

(B) Complete the EMT-Basic Refresher Training Program, U.S. Department of Transportation, National Highway Traffic Safety Administration, 1995, incorporated by reference;

(C) Pass the EMT-Basic cognitive and practical examinations within three attempts, including a same-day re-examination; and

(D) Complete the above listed program requirements within six months of applying for reinstatement.

(c) Reinstatement program for an EMT-Intermediate:

(A) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(B) Complete a Division approved EMT-Intermediate refresher course consisting of at least:

(i) 14 hours of didactic instruction;

(ii) Eight hours of clinical experience in a hospital emergency department in which patient assessment, eliciting a concise and focused medical history, oxygenation and ventilatory management, intravenous therapy, and medication preparation and administration are evaluated; and

(iii) Demonstration of five supervised and documented successful pharyngeal esophageal

airway device placements (mannequin permitted) and five supervised and documented successful intravenous line placements (mannequin permitted).

(C) Pass the EMT-Intermediate cognitive and practical examination within three attempts, including the same day re-examination; and

(D) Complete the above listed program requirements within one year of applying for reinstatement.

(d) Reinstatement program for an EMT-Paramedic:

(A) Complete an Advanced Cardiac Life Support (ACLS) course, provider or instructor course;

(B) Complete a Basic Trauma Life Support (BTLS) course, or Pre-Hospital Trauma Life Support (PHTLS) course, provider or instructor course;

(C) Complete an Advanced Pediatric Life Support (APLS), Pediatric Advanced Life Support (PALS), Pediatric Education for Pre-hospital Professionals (PEPP), or Neonatal Advance Life Support (NALS) course, provider or instructor course;

(D) Complete the U.S. Department of Transportation, National Highway Traffic Safety Administration 2001 EMT-Paramedic: National Standard Curriculum Refresher Training Program, incorporated by reference;

(E) Pass the EMT-Paramedic cognitive and practical examinations within three attempts, including the same-day re-examination;

(F) Complete the above listed program requirements within two years of applying for reinstatement; and

(G) Document completion of a DOT EMT-Paramedic Training Program taken after January 1, 1977.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0640; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0040; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

ADMINISTRATIVE RULES

333-265-0110

Certified First Responder and EMT Continuing Education Requirements for Recertification

(1) In order to retain certification after July 1, 2008 a certified First Responder is required to:

(a) Complete 12 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of Emergency Medical Technicians for First Responder re-registration.

(2) In order to retain certification after July 1, 2009 an EMT-Basic is required to:

(a) Complete 24 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of EMT-Basic re-registration.

(3) In order to retain certification after July 1, 2009 an EMT-Intermediate is required to:

(a) Complete a course with published standards and guidelines for cardiopulmonary resuscitation and emergency cardiac care where the EMT has demonstrated knowledge and skills in the performance of subcutaneous (SQ) injections, automated external defibrillator (AED) operation, one and two person rescuer cardiopulmonary resuscitation (adult, child, and infant) and relief of foreign body airway obstruction; and

(b) Obtain at least 36 hours of continuing education as specified in Appendix 1, incorporated by reference.

(4) In order to retain certification after July 1, 2009 an EMT-Paramedic is required to:

(a) Complete all requirements of the National Registry of EMT-Paramedic re-registration; or

(b) Obtain at least 48 hours of continuing education as specified in Appendix 1, incorporated by reference.

(5) Continuing education credit shall be granted for:

(a) Attending training seminars, educational conferences, and continuing education classes within the certificate holder's scope of practice; and

(b) Attending approved courses for the same or higher level of certification.

(6) Up to 50 percent of the hours of continuing education credits for each subject listed in section 1 of Appendix 1 may be obtained by:

(a) Watching a video, CD-ROM, or other visual media;

(b) Being an EMT practical certification exam evaluator, if the certificate holder is qualified as such;

(c) Reading EMT journals or articles; and

(d) Teaching any of the topics listed in Appendix 1, if the certificate holder is qualified to teach the subject.

(7) In addition to the hours of continuing education required in this rule, a certificate holder must, as specified in section 2 of Appendix 1, incorporated by reference, demonstrate skills proficiency through a hands-on competency examination supervised by the EMS Medical Director or his or her designee. An EMS Medical Director may require successful performance in a minimum number of clinical skills in these areas on either human subjects or mannequins (e.g. venipunctures, endotracheal intubations, etc.).

(8) An EMS Medical Director may require additional continuing education requirements and skill competency as needed because of changes in the scope of practice or local protocols.

(9) When a certificate holder obtains an initial certificate and there is:

(a) Less than six months until recertification, no continuing education credits are required to obtain recertification;

(b) More than six months but less than one year until recertification, the certificate holder must complete 50 percent of the continuing education credits in each category; or

(c) More than one year until recertification, the certificate holder must complete all continuing education credits.

(10) Continuing education credits are granted on an hour-for-hour basis.

(11) It shall be the responsibility of each certificate holder to ensure the hours obtained meet the Division's recertification requirements.

(12) A certificate holder must submit proof, in a manner prescribed in OAR 333-265-0140 that the continuing education requirements have been met.

(13) Continuing education programs, journals and articles that may count towards continuing education requirements must be approved by the EMS Medical Director or the Division.

(14) The continuing education requirements in this rule apply to:

(a) Certified First Responders applying for recertification on or after July 1, 2008; and

(b) EMT-Basics, Intermediates, and Paramedics applying for recertification on or after July 1, 2009.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0645; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0045; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0140

Maintaining Certified First Responder and EMT Continuing Education Records

(1) A certificate holder is responsible for retaining records that show successful completion of all required continuing education for the two previous certification periods.

(2) The Division will accept as proof of successful completion:

(a) A class roster that contains:

(A) The name of the teaching institution or EMS agency;

(B) The date of the class;

(C) The class topic;

(D) The length of the class;

(E) The full name of the certificate holder attending the class;

(F) The full name of the instructor; and

(G) A signed statement as follows: "I certify by my signature that I attended and participated in the complete class described on this roster. I understand that if any information on this roster is false, I may be subject to discipline under ORS 682.220 as well as such criminal penalties as may be provided by law."

(b) A computer-generated printout history of the certificate holder's continuing education record that contains:

(A) The full name of the certificate holder;

(B) The name of the teaching institution or EMS agency conducting the classes;

(C) The dates of the classes;

(D) The class topics;

(E) The length of each class;

(F) The full name of each instructor; and

(G) A signed statement as follows: "I certify by my signature that I attended and participated in all the classes described on this printout. I understand that if any information on this printout is false, I may be subject to discipline under ORS 682.220 as well as such criminal penalties as may be provided by law."; or

(c) A certificate of course completion for one or more topics that contains:

(A) The name of the teaching institution or EMS agency conducting the course;

(B) The date(s) of the course;

(C) The course topic(s);

(D) The length of the course; and

(E) The full name of the certificate holder attending the course.

(d) If the certificate does not list each course topic, then a copy of the program listing each course topic and length of each course topic must be attached to the certificate.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; OHD 9-2001, f. & cert. ef. 4-24-01; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0150

Certified First Responder and EMT Continuing Education Records Audit

(1) The Division may conduct an audit of a certificate holder's continuing education records:

(a) The Division shall notify the certificate holder by certified mail that he or she is being audited and provide him or her with the necessary audit forms and the date the completed forms are to be returned to the Division; and

(b) Upon the return of the completed audit forms to the Division, the Division shall begin the process of verifying the continuing education records.

(2) If, in the course of an audit of continuing education records, the Division learns that, contrary to the sworn statement in the application for recertification or in the official audit form, the certificate holder has not completed all necessary continuing education requirements, the Division may:

(a) Discipline the certificate holder as set out in OAR 333-265-0080;

(b) Assess a monetary penalty in the amount of \$10 per each hour of deficient continuing education; or

(c) Require the certificate holder to demonstrate their knowledge and psychomotor skills by taking and passing a cognitive and practical examination conducted by the Division.

(3) The actions taken by the Division in section (2) of this rule will be done in accordance with ORS chapter 183.

Stat. Auth.: ORS 682.017, 682.216, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.208, 682.220, 682.224

ADMINISTRATIVE RULES

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0160

Certificate Holder's Responsibility to Notify the Division of Changes

A certificate holder must keep the Division apprised of and report the following changes within 14 calendar days of a change in:

(1) EMS Medical Director, unless the certificate holder is affiliated with an EMS agency that is on file with the Division.

(2) Legal name;

(3) Home address or a main contact phone number; or

(4) EMS affiliation.

Stat. Auth.: ORS 682.017, 682.208, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.204, 682.220, 682.224

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0170

Displaying First Responder and EMT Certification Level

(1) A certified First Responder or an EMT providing patient care must display his or her level of certification on the outmost garment of his or her usual work uniform.

(2) A certified First Responder or EMT-certification levels need not be displayed on emergency work apparel not normally worn during the provision of pre-hospital patient care, such as haz-mat suits, anti-contamination or radiation suits, firefighting apparel, etc.

(3) A certified First Responder or EMT responding from home or other off-duty locations shall make a reasonable effort to display his or her certification level. Baseball-type hats, T-shirts, safety vests, etc. are accepted for this purpose.

Stat. Auth.: ORS 682.017, 682.204, 682.220, 682.265

Stats. Implemented: ORS 682.017, 682.204, 682.220, 682.225

Hist.: OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08

333-265-0180

EMT-Intermediate Bridge Course

(1) In January 2006, the Oregon Medical Board adopted a new, increased scope of practice for EMT-Intermediates. In order for an EMT-Intermediate certified prior to this change to deliver patient care consistent with the new scope of practice, the Division developed an EMT-Intermediate Bridge Course, 2006, incorporated by reference.

(2) An EMT-Intermediate certified prior to January 1, 2006, shall complete the EMT-Intermediate Bridge Course by June 30, 2008.

(3) An EMT-Intermediate who does not wish to complete the Bridge Course may voluntarily revert to an EMT-Basic at any time prior to June 30, 2008, as specified in OAR 333-265-0090.

(4) The Division may administratively revert any EMT-Intermediate to an EMT-Basic level for failing to complete the Division approved Bridge Course by June 30, 2008. An EMT-Intermediate who is administratively reverted shall surrender his or her certificate to the Division and will be issued an EMT-Basic certification.

(5) The EMT-Intermediate who voluntarily reverts to or is administratively reverted to an EMT-Basic for failure to complete a Division approved Bridge Course shall not be eligible for reinstatement at the EMT-Intermediate level under OAR 333-265-0090(2) and (3) and will be required to reapply for certification under OAR 333-265-0025.

(6) An EMT-Intermediate may request a waiver from this rule from the Division if the EMT can show that there were exceptional circumstances, beyond the EMT's control, that prevented the EMT from completing the Bridge Course. If the Division, in its discretion, grants a waiver under this section, the EMT will be permitted a reasonable amount of time to complete the course and may have a practice restriction placed on the EMT's certification.

Stat. Auth.: ORS 682.017 & 682.245

Stats. Implemented: ORS 682.017 & 682.245

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

333-265-0190

Effective Date of Rules

Except as otherwise provided in these rules, the amendments to OAR chapter 333, division 265 are effective on the date these rules are filed and apply to any pending applications, request for approval, open investigations, or disciplinary actions in which no final action has been taken.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017

Hist.: PH 10-2008, f. & cert. ef. 6-16-08

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Rule Caption: Temporary Extension to First Responder Certification Expiration.

Adm. Order No.: PH 11-2008(Temp)

Filed with Sec. of State: 6-19-2008

Certified to be Effective: 6-20-08 thru 12-12-08

Notice Publication Date:

Rules Amended: 333-265-0025, 333-265-0040

Subject: The Department of Human Services, Public Health Division is temporarily amending the rules related to First Responder and EMT certification. This temporary rule amendment is needed to change the date that First Responders are required to apply for certification and recertification, and changes the date in which First Responder's certificates will expire. These dates are changes to allow the Public Health Division, EMS & Trauma Systems program adequate time to process applications given the timing of the implementation of new rules.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-265-0025

Application Process to Obtain a First Responder or EMT Certificate

(1) For any person to act as a First Responder or an EMT a certificate must be obtained from the Division.

(2) A First Responder must comply with the requirements in section (3) of this rule,

except that a First Responder must be at least 16 years of age and is not required to meet the education requirements in subsection (3)(d).

(3) An applicant for an EMT-Basic, Intermediate, or Paramedic certificate must:

(a) Complete and sign an application form prescribed by the Division certifying that the information in the application is correct and truthful;

(b) Meet the requirements of ORS 682.208 and these rules;

(c) Be at least 18 years of age;

(d) Be a high school graduate or equivalent, and for EMT-Paramedic certification, have an associate's degree in applied science or higher as approved by the State Board of Education and offered by Oregon's two-year community colleges or four-year colleges;

(e) Have successfully completed all course requirements for the level of certification being applied for;

(f) Consent to a criminal background check through the Law Enforcement Data System (LEDS), including a nationwide criminal record check by fingerprint identification under the authority of ORS 181.534 and 181.537 if the results of the LEDS check shows that the applicant is a "multi-state offender";

(g) Provide an authorization for the release of information, as necessary, from any persons or entities, including but not limited to educational institutions, employers, hospitals, treatment facilities, institutions, organizations, governmental or law enforcement agencies in order for the Division to complete the review of the application; and

(h) Submit a fee as set out in OAR 333-265-0030.

(4) A person must be certified at least at the Oregon EMT-Basic level or must have a current certificate from the National Registry of EMTs before being eligible to enroll in an EMT-Intermediate or EMT-Paramedic course and apply for and take any certification examinations.

(5) Any fee for a criminal background check through LEDS or a nationwide criminal background check shall be the responsibility of the applicant.

(6) An applicant for an initial certification as an EMT or First Responder who completed training in a program outside Oregon and has never been certified in another state, must meet all requirements established for someone completing training in an Oregon training program, and must have passed the National Registry for EMT's cognitive examination and practical skills examination for the level that they are seeking certification and make application within 24 months from the date they completed their training program.

(7) The Division shall return any application that is incomplete or is not accompanied by the appropriate fee.

(8) On or after August 1, 2008, all First Responders certified prior to July 31, 2008 who wish to continue to be certified as a First Responder must apply to the Division for certification by submitting:

(a) An application for certification as described in sections (1) through (5) of this rule;

(b) Documentation of initial certification and continuing education requirements for the preceding certification period; and

(c) Documentation of a current and valid American Heart Association Healthcare Provider CPR certification or equivalent.

Stat. Auth.: ORS 682.017, 682.028 & 682.208

Stats. Implemented: ORS 682.017, 682.028 & 682.208

Hist.: OHD 9-2001, f. & cert. ef. 4-24-01; Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 11-2008(Temp), f. 6-19-08, cert. ef. 6-20-08 thru 12-12-08

333-265-0040

Certification as a First Responder or EMT

(1) The Division will review an application for certification as a First Responder or EMT and will conduct a criminal background check.

ADMINISTRATIVE RULES

(2) If there are no issues that arise during the review of the application and the applicant meets all the requirements of ORS chapter 682 and these rules, the Division will grant the applicant a certificate.

(3) If there are criminal history or personal history issues that call into question the ability of the applicant to perform the duties of a certified First Responder or EMT in accordance with ORS chapter 682 or these rules, the Division may deny the applicant on the basis of the information provided in the application, or conduct an additional investigation that may include:

- (a) Requesting additional information from the applicant;
- (b) Conducting a phone or in-person interview;
- (c) Requesting that the applicant undergo a psychological, physical, alcohol or chemical dependency assessment; or
- (d) Any combination of the actions listed in subsections (3)(a), (3)(b), or (3)(c).

(4) Following an investigation the Division may:

- (a) Deny the application;
- (b) Grant the application but place the applicant on probation;
- (c) Grant the application but place practice restrictions on the applicant; or
- (d) Grant the application if the criminal or personal history issues were resolved through the investigation to the Division's satisfaction.

(5) Final actions taken by the Division in denying an applicant, placing an applicant on probation, or by placing restrictions on the applicant's practice shall be done in accordance with ORS chapter 183.

(6) Nothing in this section precludes the Division from taking an action authorized in ORS chapter 682.

(7) The certificates of First Responders expire on June 30 of even-numbered years, except for the year 2008 when a First Responder certificate will expire on September 30, 2008.

(8) The certificates of EMT-Basics, EMT-Intermediates and EMT-Paramedics expire on June 30 of odd-numbered years.

Stat. Auth.: ORS 682.017, 682.208, 682.216

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0615; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0015; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 11-2008(Temp), f. 6-19-08, cert. ef. 6-20-08 thru 12-12-08

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

Rule Caption: Support Services for Adults with Developmental Disabilities.

Adm. Order No.: SPD 8-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-29-08

Notice Publication Date: 6-1-2008

Rules Amended: 411-340-0010, 411-340-0020, 411-340-0030, 411-340-0040, 411-340-0050, 411-340-0060, 411-340-0070, 411-340-0080, 411-340-0090, 411-340-0100, 411-340-0110, 411-340-0120, 411-340-0130, 411-340-0140, 411-340-0150, 411-340-0160, 411-340-0170, 411-340-0180

Rules Repealed: 411-340-0020(T), 411-340-0060(T), 411-340-0070(T), 411-340-0130(T), 411-340-0150(T), 411-340-0170(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently amending the support services for adults with developmental disabilities rules in chapter 411, division 340 to make housekeeping changes and to permanently adopt the January 1, 2008 temporary amendments that modified how complaints from recipients of support services are handled by support services brokerages.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-340-0010

Statement of Purpose

These rules prescribe standards, responsibilities, and procedures for support services brokerages, for purchase of individual supports with support services funds, and for providers paid with support services funds to provide services to adults with developmental disabilities so that those adults may live in their own homes or in family homes. Services provided under these rules are intended to identify, strengthen, expand and, where required, supplement private, public, formal and informal support available to these adults so that they may exercise self-determination in the design and direction of their lives.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 – 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered

from 309-041-1750, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0020

Definitions

As used in OAR chapter 411, division 340:

(1) "Abuse" means:

(a) Except for services provided at sites owned or leased by provider organizations listed in section (1)(b) of this rule, one or more of the following:

(A) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program and an individual; or

(E) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being.

(b) Activities described in OAR 411-320-0020(2)(b) through (2)(c)(F) for provider organizations qualifying to be paid with support services funds as:

(A) 24-hour residential services licensed under OAR chapter 411, division 325;

(B) Adult foster homes licensed under OAR chapter 411, division 360.

(C) Employment and alternatives to employment services certified under OAR chapter 411, division 345; or

(D) Supported living services certified under OAR 309-041-0550 through OAR 309-041-0830.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(3) "Activities of Daily Living (ADL)" means those self-care activities that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

(4) "Administration of Medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(5) "Administrative Review" means the process that occurs when a grievant is not satisfied with the decision made by the brokerage about a complaint involving the provision of services or a provider. The administrative review will result in a decision by the Seniors and People with Disabilities Division Assistant Director to either uphold the local decision, or recommend another course of action.

(6) "Adult" means an individual 18 years or older with developmental disabilities.

(7) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(8) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to brokerage services listed in OAR 411-340-0120(1)(a) through (1)(g) and, if required;

(b) Assistance with purchase of supports listed in OAR 411-340-0130(6)(a) through (6)(p) with no more than:

(A) An amount assigned and published by the Seniors and People with Disabilities Division, when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the support services waiver; and

(B) An amount based on the state's General Fund contribution to the maximum amount available per plan year to a Medicaid recipient per section (8)(b)(A) of this rule, and thereafter an amount assigned and published by the Seniors and People with Disabilities Division, when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(9) "Basic Supplement" means the amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203. A basic supplement is subject to limitations outlined in OAR 411-340-0130(4)(a)(A) and (4)(a)(B).

(10) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for annual support services funds in excess of the basic benefit due to extraordinary long-term need.

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(11) "Certificate" means a document issued by the Seniors and People with Disabilities Division to a brokerage or to a provider organization that certifies the brokerage or provider organization is eligible to receive state funds for support services.

(12) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language or by other communication methods.

(13) "Chore Services" mean services needed to maintain a clean, sanitary and safe environment in an individual's home. Chore services includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress. Chore services are provided when no one in the household is capable of either performing, or paying for the services, and when no other relative, caregiver, landlord, community or volunteer agency, or third-party payer is capable of or responsible for their provision.

(14) "Client Process Monitoring System (CPMS)" means the Department of Human Services computerized system for enrolling and terminating services for individuals with developmental disabilities.

(15) "Community Inclusion Supports" means services that may include instruction in skills an individual wishes to acquire, retain or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. These supports are provided:

(a) For an individual to participate in activities to facilitate independence and promote community inclusion and contribution; and

(b) At any time in community settings of the individual's choice.

(16) "Community Living Supports" means services provided for the purpose of facilitating independence and promoting community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of community-based housing the individual chooses, consistent with the outcome for community living defined in the Individual's Support Plan. The type, frequency, and duration of direct support and other community living support is defined in the plan of care based on the individual's selected housing arrangement and assessed needs. Community living supports are available to individuals who live alone, with roommates, or with family. Community living supports include services designed to develop or maintain skills required for self-care, directing supports, and caring for the immediate environment such as:

(a) Personal skills, including eating, bathing, dressing, personal hygiene, and mobility;

(b) Socialization, including development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(c) Community participation, recreation or leisure, including the development or maintenance of skills to use generic community services, facilities, or businesses;

(d) Communication, including development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(e) Personal environmental skills including planning and preparing meals, budgeting, laundry, and housecleaning.

(17) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Seniors and People with Disabilities Division or a local mental health authority.

(18) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(19) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Seniors and People with Disabilities Division alone or in combination with any associated employment or community inclusion program regulated by the Seniors and People with Disabilities Division:

(a) 24-hour residential services including, but not limited to, services provided in a group home, in a foster home, or through a supported living program; or

(b) In-home supports costing more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments provided to an individual in the individual or family home. Such services do not include support services for adults enrolled in brokerages or for children enrolled in child and family support services or children's intensive in-home services.

(20) "Department (DHS)" means the Department of Human Services.

(21) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(22) "Emergent Status" means a temporary, unpredictable situation when an individual enrolled in a brokerage may be allowed to receive Seniors and People with Disabilities Division-paid support exceeding \$21,119 per year to remain in the individual's home or family home or to enter a short-term out-of-home residential placement without exiting support services.

(a) An individual will only be considered in emergent status if the individual is in jeopardy of losing his or her living situation due to inability or unavailability of the primary caregiver, when no alternative resources are available, and when the Community Developmental Disability Program of the individual's county of residence has determined that the individual meets criteria for crisis or diversion services according to OAR 411-320-0160.

(b) Services are provided while an individual is in emergent status to prevent the individual's civil court commitment under ORS chapter 427 and there is imminent risk of loss of the individual's community support system. Services to maintain the individual in the community and stabilize the situation are crisis or diversion services according to OAR 411-320-0160 that may include short-term residential placement services indicated in the individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support in the individual's home as described in the Support Services Individual Support Plan.

(c) Length of emergent status may be authorized only by the Community Development Disability Program of the individual's county of residence, or the Regional Crisis Program responsible for the individual's county of residence, depending on the source of the crisis or diversion funds. In no case will emergent status for an individual exceed 270 consecutive days in 12 consecutive months.

(23) "Employer-Related Supports" means activities that assist individuals and, when applicable, their family members, with directing and supervising provision of services described in the Individual Support Plan. Supports to the employer include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(24) "Entry" means admission to a Seniors and People with Disabilities Division-funded developmental disability service provider.

(25) "Environmental Accessibility Adaptations" means physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Examples of these services include, but are not limited to:

(A) Environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke detectors, light fixtures and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for individuals whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or

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(R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Examples of what these services do not include:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(26) "Environmental Modification Consultant" means either an independent provider or a provider organization paid with support services funds to provide advice to an individual, the individual's legal representative or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(27) "Exit" means either termination from a Seniors and People with Disabilities Division-funded program or transfer from one Seniors and People with Disabilities Division-funded program to another. Exit does not mean transfer within a provider's program.

(28) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that includes at least one individual with developmental disabilities where the primary caregiver is:

(a) Related to the individual with developmental disabilities by blood, marriage or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage or legal adoption.

(29) "Family Training" means training and counseling services for the family of an individual to increase capabilities to care for, support and maintain the individual in the home.

(a) Family training includes:

(A) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(B) Information, education and training about the individual's disability, medical, and behavioral conditions; and

(C) Counseling for the family to relieve the stress associated with caring for an individual with disabilities.

(b) Family training is provided by licensed psychologists, professionals licensed to practice medicine, social workers, counselors, or in organized conferences and workshops that are limited to topics related to the individual's disability, identified support needs, or specialized medical or rehabilitative support needs. Family training is not provided to paid caregivers.

(30) "Fiscal Intermediary" means a person or agency that receives and distributes support services funds on behalf of an individual according to an Individual Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals who employ persons to provide services, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(31) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors or volunteers; and

(c) Receives compensation to recruit, supervise and pay the persons who actually provide support for the individual.

(32) "Grievance" means a process by which a person may air complaints and seek remedies.

(33) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services include supported employment, community living supports and community inclusion supports.

(34) "Home" means an individual's primary residence that is not licensed, certified by, and under contract with, the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(35) "Homemaker Services" means support consisting of general household activities such as meal preparation and routine household services provided by a trained homemaker. Homemaker services are provided when the person regularly responsible for these activities as well as caring for an individual in the home is temporarily absent, temporarily unable to

manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual.

(36) "Incident Report" means a written report of any injury, accident, act of physical aggression or unusual incident involving an individual.

(37) "Independence" means the extent to which individuals with mental retardation or developmental disabilities exert control and choice over their own lives.

(38) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with support services funds who personally provides services to the individual.

(39) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(40) "Individual Support Plan (ISP)" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals. The Individual Support Plan is developed by the individual, the individual's personal agent, the individual's legal representative (if any), and other persons who have been invited to participate by the individual or individual's legal representative. The Individual Support Plan articulates decisions and agreements made through a person-centered process of planning and information-gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(41) "Integration" means use by individuals with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(42) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(43) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties that operate a Community Developmental Disability Program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a Community Developmental Disability Program, the board of directors of a public or private corporation.

(44) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(45) "Medicaid Fair Hearing" means the formal process following an action that would terminate, suspend, reduce or deny a Medicaid service. This is a formal process required by federal law (42 CFR 431.200-250). A Medicaid Fair Hearing is also known as a contested case hearing.

(46) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(47) "Nurse" means a person who holds a valid, current license as a registered nurse (RN) or licensed practical nurse (LPN) from the Oregon Board of Nursing.

(48) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family.

(49) "Occupational Therapy" means the services of a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(50) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for the services listed in OAR 411-340-0120(1), who meets the requirements of OAR 411-340-0150(5) and who is:

(a) A trained employee of a brokerage; or

(b) A person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(51) "Personal Emergency Response Systems" means electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(52) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

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(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships and resources.

(c) Person-centered planning helps the individual and those significant to the individual to identify, use and strengthen naturally occurring opportunities for support at home and in the community. Methods for gathering information vary, but all are consistent with individual needs and preferences, ranging from simple interviews with the individual to informal observations in home and community settings to formally structured meetings.

(53) "Physical Therapy" means services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(54) "Plan Year" means 12 consecutive months used to calculate an individual's annual basic benefit. Unless otherwise set according to conditions of OAR 411-340-0120(5)(b) or 411-340-0130(4)(b)(F), the initial plan year begins on the start date specified on the individual's first Individual Support Plan after enrollment in a brokerage after the initial Individual Support Plan is approved and signed by the Community Developmental Disability Program authorizing implementation. Subsequent plan years begin on the anniversary of the start date of the initial Individual Support Plan.

(55) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(56) "Prescription Medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(57) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual's home.

(58) "Productivity" means:

(a) Engagement in income-producing work by an individual with mental retardation or developmental disabilities that is measured through improvements in income level, employment status or job advancement; or

(b) Engagement by an individual with mental retardation or developmental disabilities in work contributing to a household or community.

(59) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors or volunteers; and

(c) Receives compensation to recruit, supervise and pay the persons who actually provide support for the individual.

(60) "Provider Organization Director" means the employee of a provider organization responsible for administration and provision of services according to these rules, or that person's designee.

(61) "Psychotropic Medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood or behavior. Psychotropic medication includes, but is not limited to, anti-psychotic, anti-depressant, anxiolytic (anti-anxiety) and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(62) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency and appropriateness of services.

(63) "Respite Care" means short-term services and supervision provided because of the absence, or need for relief of, persons normally providing the services to individuals unable to care for themselves. Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence. Respite includes two types of care, neither of which can be characterized as eight-hours-a-day, five-days-a-week services or are provided to allow caregivers to attend school or work.

(a) Temporary respite care is provided on less than a 24-hour basis.

(b) 24-hour overnight care is provided in segments of 24-hour units that may be sequential.

(64) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(65) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance, upon

written order of a physician, and safely maintains the medication without supervision.

(66) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom — The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority — The ability for an individual with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy —

The arranging of resources and personnel, both formal and informal, that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility —

The acceptance of a valued role in an individual's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals with developmental disabilities.

(67) "Seniors and People with Disabilities Division (SPD)" means the division within the Department of Human Services that focuses on the planning of services, policy development and regulation of programs for individuals that have developmental disabilities, are elderly or have physical disabilities.

(68) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of a person who does not have such disability. Such a benefit or service does not:

(a) Duplicate benefits and services otherwise available to persons regardless of disability;

(b) Provide financial assistance with food, clothing, shelter and laundry needs common to persons with or without disabilities; or

(c) Replace other governmental or community services available to an individual. Financial assistance provided as a social benefit or social services does not exceed the actual cost of the support required by an individual and must be either:

(A) Reimbursement for an expense authorized in a previously-approved plan of service; or

(B) An advance payment in anticipation of an expense authorized in a previously negotiated and approved Individual Support Plan.

(69) "Special Diet" means specially prepared food or particular types of food needed to sustain the individual in the family home.

(a) Special diets can include:

(A) High caloric supplements;

(B) Gluten-free supplements; and

(C) Diabetic, ketogenic or other metabolic supplements.

(b) Special diets are ordered by a physician and periodically monitored by a dietician.

(c) Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements.

(d) Special diets do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability.

(70) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies does not include items not of direct medical or remedial benefit to the individual. All items must meet applicable standards of manufacture, design and installation.

(71) "Specialized Supports" mean treatment, training, consultation or other unique services necessary to achieve outcomes in the plan of care that are not available through State Medicaid Plan services or other support services listed in OAR 411-340-0130(6)(a) through (6)(p). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the support plan;

(d) Monitor implementation of plan; and

(e) Revise the plan as needed.

(72) "Speech and Language Therapy Services" means the services of a professional licensed under ORS 681.250 that are defined under the

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approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(73) "Support" means assistance that individuals require, solely because of the effects of disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(74) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(75) "Support Services" means the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by the individual or individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(76) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (1)(g) associated with planning and implementation of support services for individuals with developmental disabilities, using the principles of self-determination.

(77) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(78) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Seniors and People with Disabilities Division to be added to an Individual Support Plan to describe crisis or diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement. This short-term plan is coordinated by staff of the Community Developmental Disability Program of the individual's county of residence.

(79) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 411-340-0150(1) for such groups.

(80) "Support Services Funds" means public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(81) "Support Specialist" means an employee of a Community Developmental Disability Program that performs the essential functions described in OAR chapter 411, division 320 necessary to ensure the proper use of support services resources for individuals served by a brokerage.

(82) "These Rules" means the rules in OAR chapter 411, division 340.

(83) "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.

(84) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0030

Certification of Support Service Brokerages and Provider Organizations

(1) CERTIFICATE REQUIRED. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage or operate a brokerage without being certified under these rules. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under these rules or current SPD license or certification described in OAR 411-340-0170(1).

(a) Each certificate is issued only for the brokerage, or for the provider organization requiring certification under OAR 411-340-0170(2),

and persons or governmental units named in the application and is not transferable or assignable.

(b) Each certificate is issued for a maximum of two years.

(c) SPD will conduct a review of the brokerage or provider organization requiring certification under OAR 411-340-0170(2) prior to the issuance of a certificate.

(2) CERTIFICATION. A brokerage or a provider organization requiring certification under OAR 411-340-0170(2) must apply for initial certificate and for certificate renewal.

(a) The application must be on a form provided by SPD and must include all information requested by SPD.

(b) The applicant for certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage or provider organization requiring certification under OAR 411-340-0170(2) must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by SPD.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and will extend the effective date until SPD takes action upon such application.

(e) Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application may result in denial, revocation or refusal to renew the certificate.

(f) Prior to issuance or renewal of the certificate the applicant must demonstrate to the satisfaction of SPD that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) CERTIFICATION EXPIRATION, TERMINATION OF OPERATIONS, CERTIFICATE RETURN.

(a) Unless revoked, suspended or terminated earlier, each certificate to operate a brokerage or a provider organization requiring certification under OAR 411-340-0170(2) will expire on the expiration date specified on the certificate.

(b) If operation of a brokerage or provider organization requiring certification under OAR 411-340-0170(2) is discontinued, the certificate terminates automatically on the date the operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, MANAGEMENT CORPORATION. The brokerage or provider organization requiring certification under OAR 411-340-0170(2) must notify SPD in writing of any pending action resulting in a 5 percent or more change in ownership and of any pending change in the brokerage's or provider organization's legal entity, legal status or management corporation.

(5) NEW CERTIFICATE REQUIRED. A new certificate is required upon change in a brokerage's or provider organization's ownership or legal entity or legal status. The brokerage or provider organization must submit a certificate application at least 30 days prior to change in ownership or legal entity or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, REFUSAL TO RENEW. SPD may deny, revoke or refuse to renew a certificate when it finds the brokerage or provider organization, the brokerage or provider organization director, or any person holding 5 percent or greater financial interest in the brokerage or provider organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized and fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this rule, "inspection" means an on-site review of the service site by SPD for the purpose of investigation or certification);

(c) Has been convicted of a felony;

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by SPD to be maintained or submitted regarding services of individuals, program finances or individuals' funds;

(f) Has been found to have permitted, aided or abetted any illegal act that has had significant adverse impact on individual health, safety or welfare; or

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION OR REFUSAL TO RENEW. Following a SPD finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized, or that one or more of the events listed in section (6)(a) through (6)(g) of this rule has occurred, SPD may issue a notice of certificate revocation, denial or refusal to renew.

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(8) **IMMEDIATE SUSPENSION OF CERTIFICATE.** In any case where SPD finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, SPD may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(9) **HEARING.** Following issuance of a notice of certificate denial, revocation, refusal to renew, or suspension, SPD will provide the opportunity for a hearing.

(a) An applicant for a certificate, or certificate holder, upon written notice from SPD of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the contested case provisions of ORS chapter 183. In addition to, or in lieu of, a contested case hearing, the applicant or certificate holder may request a review by the Assistant Director of denial, suspension, revocation or refusal to renew a certificate. This review does not diminish the right of the applicant or certificate holder to a hearing.

(b) Upon written notification by SPD of revocation, denial or refusal to renew a certificate, pursuant to section (9)(a) of this rule, the applicant or certified program will be entitled to a hearing in accordance with ORS chapter 183 within 60 days of receipt of notice. The request for a hearing must include an admission or denial of each factual matter alleged by SPD and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certified program may have.

(c) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization will be entitled to an administrative review within 10 days after its written request to SPD for a review regarding certificate suspension. Any review requested after the end of the 30-day period following certificate suspension will be treated as a request for hearing under section (9)(b) of this rule. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 – 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0040

Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) **ABUSE PROHIBITED.** Any adult or individual as defined in OAR 411-340-0020 will not be abused nor will abuse be condoned by any employee, staff or volunteer of the brokerage or provider organization.

(a) Brokerages and provider organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an alleged perpetrator in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) Any employee of a brokerage or provider organization is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by DHS. All employees must be provided with a DHS-produced card regarding abuse reporting status and abuse reporting.

(2) UNUSUAL INCIDENTS.

(a) A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a brokerage or provider organization employee must be prepared at the time of the incident and placed in the individual's record. Such description must include:

(A) Conditions prior to or leading to the incident;

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Copies of all unusual incident reports involving abuse that occurs while an individual is receiving brokerage or provider organization services must be sent to the CDDP support specialist. Copies of reports of all unusual incidents that occur while the individual is receiving services from a provider organization must be sent to the individual's brokerage within five working days of the incident.

(c) The brokerage must immediately report to the CDDP, and the provider organization must report to the CDDP with notification to the brokerage, any incident or allegation of abuse falling within the scope of OAR 411-340-0020(1). When the CDDP has initiated an abuse investigation, the CDDP must ensure that either the support specialist or the brokerage also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the

individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

(d) In the case of a serious illness, injury or death of an individual, the brokerage or provider organization must immediately notify:

(A) The individual's legal guardian or conservator, parent, next of kin, designated contact person or other significant person;

(B) The Community Developmental Disability Program;

(C) In the case of the provider organization, the individual's brokerage; and

(D) The Seniors and People with Disabilities Division.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 – 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0050

Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) All services covered by this rule must allow the following types of investigations and inspections:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) DHS, CDDP, or proper authority will perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by DHS, CDDP or proper authority; and

(b) Submitted to DHS within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or DHS or CDDP has determined to initiate an investigation, the brokerage or provider organization must not conduct an internal investigation without prior authorization from DHS. For the purposes of this rule, an "internal investigation" is defined as:

(a) Conducting interviews with the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken.

(6) DHS or CDDP will conduct investigations as prescribed in OAR 407-045-0250 through 407-045-0360, Abuse Reporting and Protective Services in Community Programs and Community Facilities, and will complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report will include the findings based upon the abuse investigation.

(a) "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(b) "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse or attributable to the person alleged to have engaged in such conduct.

(c) "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the persons alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation by DHS, CDDP, or a law enforcement agency, a provider may conduct an investigation without further DHS approval to determine if any other personnel actions are necessary.

(8) Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report that are public records and not exempt from disclosure under the public records law will be provided to the appropriate brokerage or provider organization.

(9) A plan of improvement must be submitted to SPD for any non-compliance found during an inspection pursuant to section (1)(a) of this rule.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 – 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-

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28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0060

Complaints and Grievances in Support Services Brokerages

(1) COMPLAINTS. Brokerages must develop and implement written policies and procedures regarding individual complaints and a formal grievance process. These policies and procedures must at minimum address:

(a) Receipt of complaints. If a complaint is associated in any way with abuse, the recipient of the complaint must immediately report the issue to the CDDP and notify the brokerage director and, if applicable, the provider organization director. The brokerage must maintain a log of all complaints received regarding the brokerage, provider organization or independent provider from individuals and others acting on the behalf of individuals and from provider organizations acting in accordance with OAR 411-340-0170(2)(a)(C)(v).

(A) The complaint log must, at a minimum, include the following:

- (i) The date the complaint was received;
- (ii) The person taking the complaint;
- (iii) The nature of the complaint;
- (iv) The name of the person making the complaint, if known; and
- (v) The disposition of the complaint.

(B) Brokerage personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(b) Informal complaint resolution. An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any allegation that a brokerage, provider organization or independent provider has taken action that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(c) Investigation of the facts supporting or disproving the complaint.

(d) Taking appropriate actions. Steps to resolve the complaint must be taken within five working days following receipt of the complaint. If the complaint cannot be resolved informally, or if the individual making the complaint so chooses at any time, the individual may request a formal resolution of the complaint and, if needed, must be assisted by the brokerage with initiating the formal grievance process.

(e) Review by the brokerage director. If a complaint involves brokerage staff or services and if the complaint is not resolved according to section (1)(b) through (1)(d) of this rule, or if the person making the complaint requests one, a formal review must be completed by the brokerage director and a written response to the grievant provided within 30 days following receipt of the complaint.

(f) Agreement to resolve the complaint. Any agreement to resolve a complaint that has been formally reviewed by the brokerage director must be committed to writing and must be specifically approved by the grievant. The grievant must be provided with a copy of the agreement.

(g) Administrative review. Unless the grievant is a Medicaid recipient who has elected to initiate the Medicaid Fair Hearing process according to section (3) of this rule, when a complaint cannot be resolved by the brokerage and the complaint involves the provision of service or a provider, the complaint may be submitted to SPD for administrative review.

(A) Following a decision by the brokerage director regarding a complaint, the grievant may request an administrative review by the Assistant Director of SPD.

(B) The grievant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the brokerage director.

(C) Upon receipt of a request for an administrative review, the Assistant Director will appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee will be comprised of a representative of SPD, a CDDP representative and a brokerage representative. Committee representatives will not have any direct involvement in the provision of services to the grievant or have a conflict of interest in the specific case being grieved.

(D) The Administrative Review Committee will review the complaint and the decision by the brokerage director and make a recommendation to the Assistant Director within 45 days of receipt of the complaint unless the grievant and the Administrative Review Committee mutually agree to an extension.

(E) The Assistant Director will consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision will be made in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision will contain the rationale for the decision.

(F) The decision of the Assistant Director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review in the Marion County Circuit Court.

(h) Documentation of complaint. Documentation of each complaint and its resolution must be filed or noted in the grievant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, and when a complaint is not resolved according to section (1)(b) through (1)(d) of this rule, the brokerage must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate to the individual's needs and abilities, of the following:

(a) Brokerage grievance policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a Medicaid Fair Hearing as per section (3) of this rule and of the method to obtain a Medicaid Fair Hearing.

(3) DENIAL, TERMINATION, SUSPENSION OR REDUCTION OF SERVICES FOR INDIVIDUAL MEDICAID RECIPIENTS.

(a) Each time the brokerage takes an action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid, the brokerage must notify the individual or the individual's legal representative of the right to a hearing and the method to obtain a hearing. The brokerage must mail the notice via certified mail, or personally serve it to the individual or the individual's legal representative 10 days or more prior to the effective date of an action.

(A) The brokerage must use SDS 0947, Notice of Hearing Rights, or a comparable SPD-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the ISP and the individual, or the individual's legal representative, has agreed with the action by signature to the plan.

(b) A notice required by section (3)(a) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a Medicaid Fair Hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) That the brokerage's files on the subject of the Medicaid Fair Hearing automatically become part of the Medicaid Fair Hearing record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice will take effect by default if the DHS representative does not receive a request for a Medicaid Fair Hearing from the party within 45 days from the date that the brokerage mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a Medicaid Fair Hearing will be granted; and

(H) An explanation of the circumstances under which brokerage services will be continued if a Medicaid Fair Hearing is requested.

(c) If the individual or the individual's legal representative disagrees with a decision or proposed action by the brokerage to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid, the party may request a Medicaid Fair Hearing. DHS must receive the signed form within 45 days after the brokerage mailed the notice of action.

(d) The individual or the individual's legal representative may request an expedited Medicaid Fair Hearing if the individual feels that there is immediate, serious threat to the individual's life or health should the individual follow the normal timing of the Medicaid Fair Hearing process.

(e) If the individual or individual's legal representative requests a Medicaid Fair Hearing before the effective date of the proposed actions and requests that the existing services be continued, DHS will continue the services.

(A) DHS will continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and DHS renders a final order about the complaint; or

(iii) The individual is no longer eligible for Medicaid benefits.

(B) DHS will notify the individual or individual's legal representative that it is continuing the service. The notice will inform the individual or individual's legal representative that, if the hearing is resolved against the individual, DHS may recover the cost of any services continued after the effective date of the continuation notice.

(f) DHS will reinstate services if:

(A) DHS takes an action without providing the required notice and the individual or individual's legal representative requests a Medicaid Fair Hearing;

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(B) DHS fails to provide the notice in the time required in this rule and the individual or individual's legal representative requests a Medicaid Fair Hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(g) DHS will promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the Medicaid Fair Hearing decision is favorable to the individual, or DHS decides in the individual's favor before the Medicaid Fair Hearing.

(h) The DHS representative and the individual or the individual's legal representative may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for DHS and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the Medicaid Fair Hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and DHS the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give DHS an opportunity to review its action or the action of the brokerage.

(i) The individual or individual's legal representative may, at any time prior to the hearing date, request an additional conference with the DHS representative. The DHS representative may grant a conference, at his or her discretion, if it will facilitate the Medicaid Fair Hearing process.

(j) DHS may provide the individual or individual's legal representative the relief sought at any time before the final order is issued.

(k) An individual or the individual's legal representative may withdraw a Medicaid Fair Hearing request at any time. The withdrawal will be effective on the date DHS or the Office of Administrative Hearings receives it. DHS will issue a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or the individual's legal representative may cancel the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order on the individual and DHS.

(B) If the administrative law judge issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by DHS. The exceptions must be in writing and must be received by DHS no later than 10 days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless DHS grants prior approval.

(C) After receiving the exceptions, if any, DHS may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, DHS may issue an amended proposed order.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0070

Support Services Brokerage and Provider Organization Personnel Policies and Practices

(1) Brokerages and provider organizations must maintain up-to-date written position descriptions for all staff as well as a file available to SPD or CDDP for inspection that includes written documentation of the following for each staff:

(a) Reference checks and confirmation of qualifications prior to hire;

(b) Written documentation of a criminal history check by DHS;

(c) Satisfactory completion of basic orientation, including instructions for mandatory abuse reporting and training specific to developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;

(d) Written documentation of employee notification of mandatory abuse reporter status;

(e) Written documentation of any substantiated abuse allegations;

(f) Written documentation of any complaints filed against the staff and the results of the complaint process, including, if any, disciplinary action; and

(g) Legal U.S. worker status.

(2) Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.

(3) Each brokerage and provider organization regulated by these rules must be a drug-free workplace.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1810, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0080

Support Service Brokerage and Provider Organization Records

(1) CONFIDENTIALITY. Brokerage and provider organization records of services to individuals must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA and any DHS rules or policies pertaining to individual service records.

(2) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, brokerages and provider organizations requiring certification under OAR 411-340-0170(2) will be considered "providers" as defined in ORS 179.505(1), and 179.505 will be applicable. Access to records by DHS does not require authorization by the individual or family. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) GENERAL FINANCIAL POLICIES AND PRACTICES. The brokerage or provider organization must:

(a) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(b) As a provider organization, or as a brokerage offering services to the general public, establish and revise as needed a fee schedule identifying the cost of each service provided. Billings for Title XIX funds must not exceed the customary charges to private individuals for any like item or service charged by the brokerage or provider organization.

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any DHS rule pertaining to fraud and embezzlement.

(4) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period. Individual records must be kept for a minimum of seven years.

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

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0090

Common Standards: Variances

(1) Variances may be granted to a brokerage or provider organization if the brokerage or provider organization:

(a) Lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) OAR 411-340-0130 and 411-340-0140 are specifically excluded from variance.

(3) The brokerage or provider organization requesting a variance must submit, in writing, an application to SPD that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's services, evidence that the variance is consistent with a currently-approved ISP according to OAR 411-340-0120(7).

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(4) The Assistant Director may approve or deny the request for a variance.

(5) SPD will notify the brokerage or the provider organization and the CDDP of the decision. This notice will be sent within 45 calendar days of the receipt of the request by SPD with a copy sent to all relevant SPD programs or offices.

(6) Appeal of the denial of a variance request must be made in writing to the Assistant Director, whose decision is final.

(7) SPD will determine the duration of the variance.

(8) The brokerage may implement a variance only after written approval from SPD.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1830, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0100

Eligibility for Support Service Brokerage Services

(1) **NON-DISCRIMINATION.** Individuals determined eligible according to section (2)(a) through (2)(e) of this rule must not be denied brokerage services or otherwise discriminated against on the basis of age or diagnostic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, income or duration of Oregon residence.

(2) **ELIGIBILITY.** The CDDP of an individual's county of residence may find the individual eligible for a brokerage when:

(a) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(b) The individual is an adult living in the individual's own home or family home and not receiving other SPD-paid in-home or community living support other than State Medicaid Plan services;

(c) The individual is not enrolled in comprehensive services;

(d) At the time of initial proposed enrollment in the brokerage, the individual is not receiving short-term services from SPD because the individual is eligible for, and at imminent risk of, civil commitment under ORS chapter 427; and

(e) The individual or the individual's legal representative has chosen to use a brokerage for assistance with design and management of personal supports.

(3) **CONCURRENT SERVICES.** Individuals must not be eligible for service by more than one brokerage unless the concurrent service:

(a) Is necessary to effect transition from one brokerage to another; and

(b) Is part of a collaborative plan between the affected brokerages in which services and expenditures are not duplicated.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0110

Standards for Support Service Brokerage Entry and Exit

(1) The brokerage must make accurate, up-to-date information about the program available to individuals referred for services. This information must include:

(a) A declaration of program philosophy;

(b) A brief description of the services provided by the program, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of individual rights, including rights to:

(A) Choose a brokerage among SPD contracted brokerages in an individual's county of residence;

(B) Choose a personal agent among those available in the selected brokerage;

(C) Select providers among those qualified according to OAR 411-340-0160, 411-340-0170, and 411-340-0180 to provide supports authorized through the ISP;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060(3) when services covered under Medicaid are denied, terminated, suspended or reduced.

(g) Indication that additional information about the brokerage is available on request. The additional information must include, but not be limited to:

(A) A description of the brokerage's organizational structure;

(B) A description of any contractual relationships the brokerage has in place or can establish to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and its Policy Oversight Group.

(2) The brokerage must make information required in section (1)(a) through (1)(g) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) An individual must enter brokerage services within 90 calendar days of the date the CDDP has completed processes of eligibility determination, selection of brokerage, application, and referral except during the period of statewide brokerage development July 1, 2001 through June 30, 2009. During that period, and unless SPD has implemented statewide changes in the order of group enrollments according to section (3)(b) of this rule, individuals who have been determined eligible, selected the brokerage, and completed CDDP processes for application and referral to the brokerage will enter in the following order:

(A) First, and continuing through June 30, 2009, individuals who are not receiving any SPD-funded developmental disability services as of the date the brokerage is certified to provide services, entering according to priorities and characteristics described in written SPD guidelines, and in order of date of formal application made during the CDDP referral process; and

(B) Second, beginning while enrollment of individuals per section (3)(a)(A) of this rule is still in progress and continuing through June 30, 2009, individuals receiving only employment and alternative to employment services, regulated by OAR chapter 411, division 345 in the brokerage's area of service, as of the date the brokerage is certified to provide services.

(b) Notwithstanding the order of group enrollments indicated in sections (3)(a)(A) through (3)(a)(B) of this rule, SPD may implement changes in the order of enrollment on a statewide basis when SPD has determined that such changes are prudent and necessary for the continued development and operation of brokerages.

(c) The brokerage must not accept individuals for entry beyond the total number of individuals specified in its current contract with SPD.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

(A) At the written request of the individual or the individual's legal representative to end the service relationship;

(B) No less than 30 days after the brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by brokerage staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate; or

(C) Whenever the individual's emergent status exceeds 270 days in 12 consecutive months.

(b) Each brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when that individual plans to exit, or exits, brokerage services. Notification method, timelines and content must be based on agreements between the brokerage and CDDP's of each county in which the brokerage provides services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1850, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0120

Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(e) Fiscal intermediary activities in the receipt and accounting of support services funds on behalf of an individual in addition to making payment with the authorization of the individual;

(f) Employer-related supports, assisting individuals to fulfill roles and obligations as employers of support staff when plans call for such arrangements; and

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(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) Brokerages must apply the principles of self-determination to provision of services required in sections (1)(a) through (1)(g) of this rule.

(3) **PERSON-CENTERED PLANNING.** A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) **HEALTH AND SAFETY ISSUES.** The planning process must address basic health and safety needs and supports, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(5) **WRITTEN PLAN REQUIRED.**

(a) The personal agent must write an initial ISP that is signed by the individual (or the individual's legal representative) and, unless circumstances allow exception under section (5)(b) of this rule, dated within 90 days of entry into brokerage services and at least annually thereafter. When an individual's legal representative must sign the plan, the individual's personal agent must also work with the legal representative to inform the individual as completely as possible of the contents of the plan and to obtain, to the degree possible, the individual's agreement to the plan. The plan or attached documents must include:

(A) The individual's name;

(B) A description of the supports required, including the reason the support is necessary;

(C) Projected dates of when specific supports are to begin and end;

(D) Projected costs, with sufficient detail to support estimates;

(E) A list of personal, community, and public resources that are available to the individual and how they will be applied to provide the required supports;

(F) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general provider) of supports to be purchased with support services funds; and

(G) Schedule of plan reviews.

(b) The schedule of the first new support services ISP developed in compliance with section (3) of this rule after an individual enters a brokerage may be adjusted to promote continuity of services one time for any individual entering a brokerage in certain circumstances. Such an adjustment will interrupt any plan year in progress and establish a new plan year for the individual beginning on the date the first new ISP is approved and signed by the CDDP authorizing implementation. Circumstances where this adjustment is permitted include:

(A) Transition of individuals receiving self-directed support services governed by OAR 309-041-1110 through OAR 309-041-1170 to support services between November 1, 2001, through June 30, 2002. The date of the individual's first ISP after enrollment in a brokerage may be adjusted to correspond to the expiration date of the individual's Self-Directed Support Plan in place at the time of transition to the brokerage if the Self-Directed Support Plan otherwise meets the requirements of sections (5)(a)(A) through (5)(a)(G) of this rule, has been approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage, and does not authorize support services fund expenditures in excess of the average monthly amount available through the basic benefit;

(B) Transition of individuals receiving employment and alternative to employment services regulated by OAR chapter 411, division 345, without SPD-paid residential services, to support services July 1, 2003. The date of the individual's first new support services ISP after enrollment in the brokerage may be adjusted to correspond to the expiration date of the individual's ISP in place at the time of transition or to October 1, 2003, whichever is later, when the individual is among those required to transition into support services from employment and alternative to employment services July 1, 2003, and when the ISP developed while the individual is still enrolled in employment and alternative to employment services has been approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage;

(C) Transition of individuals receiving family support services for children with developmental disabilities, regulated by OAR chapter 411, division 305, children's intensive in-home services (CIIS), regulated by OAR chapter 411, division 300, or medically fragile children (MFC) services, regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of the individual's first new support services ISP after enrollment in the brokerage may be adjusted to correspond to the expiration date of the individual's annual plan (Child and Family Support Plan (Family Support), Complete Plan of Care (CIIS), or Comprehensive

Plan of Care (MFC)) in place at the time the individual turns 18 years of age when the annual plan developed while the individual is still receiving family support, CIIS, or MFC services has been approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage; or

(D) Transition of individuals receiving other SPD-paid services who are required by SPD to transition to support services. The date of the individual's first support services ISP may be adjusted to correspond to the expiration date of the individual's plan for services that has been developed according to regulations governing SPD-paid services the individual receives prior to transition, is current at the time designated by SPD for transition to support services, and is approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage.

(6) **PROFESSIONAL OR OTHER SERVICE PLANS.** When applicable:

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase services requiring the education and training of a licensed professional nurse; and

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by SPD for use in these circumstances, must be attached when an individual enrolled in a brokerage:

(A) Has been determined eligible for crisis or diversion services according to OAR 411-320-0160 by the CDDP of the individual's county of residence; and

(B) The individual is in emergent status in a short-term out-of-home residential placement as part of the individual's crisis or diversion services.

(7) **CDDP SUPPORT SPECIALIST APPROVAL.**

(a) With the exception of circumstances indicated in section (7)(b) of this rule, the brokerage must obtain written CDDP support specialist approval prior to implementation of:

(A) Initial and annual Individual Support Plans; and

(B) Significant changes in the ISP that include, but are not limited to, changes in the types of support purchased with support services funds and changes in supports that will cause total plan year expenses to exceed original estimates by more than 10 percent, but which do not include changes in the providers chosen to provide direct assistance to the individual.

(b) When immediate, unexpected, and significant change in the type of support purchased with support services funds is necessary outside of the normal hours of CDDP operation and to prevent injury or harm to the individual, the brokerage may implement the change but must obtain written confirmation within 10 calendar days from the date of the change from the CDDP specialist indicating that the change was appropriate and, if applicable, that ongoing change in services is approved.

(8) **PERIODIC REVIEW OF PLAN AND RESOURCES.** The personal agent will conduct and document reviews of plans and resources with the individual and the individual's legal representative as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the ISP;

(b) At least annually and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan, assessing and revising goals as needed;

(B) Record final support services fund costs;

(C) Note effectiveness of purchases based on personal agent observation as well as individual satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports.

(9) **TRANSITION TO ANOTHER BROKERAGE.** At the request of an individual enrolled in brokerage services who has selected another brokerage, the brokerage must collaborate with the receiving brokerage and the CDDP of the individual's county of residence to effect transition of support services.

(a) If SPD has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify SPD to consider transfer of the funds for the individual to the receiving brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after enrollment in the new brokerage while a new plan is negotiated and approved.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0130

Using Support Services Funds to Purchase Supports

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP that:

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(a) Identifies supports that are necessary for an individual to live in the individual's own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports and that are within the basic benefit limits, unless authorized for supplement to the basic benefit according to section (4)(a) through (4)(e) of this rule; and

(d) Has been approved for implementation by the CDDP support specialist.

(2) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(3) **LIMITS OF FINANCIAL ASSISTANCE.** Assistance with purchase of individual supports in any plan year is limited to the basic benefit unless individual circumstances meet the conditions of the exceptions indicated in sections (4)(a) through (4)(g) of this rule.

(a) Basic benefit distribution for full plan year. Individuals must have access throughout the plan year to the total annual amount of support services funds determined necessary to implement an approved ISP, even if there is a delay in implementation of the plan, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) Basic benefit distribution adjustments. SPD may require that annual basic benefit amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year or when, for any reason, an individual's ISP is developed and written to be in effect for less than 12 months.

(A) In the case of an individual whose Medicaid eligibility changes, the monthly basic benefit limit will be 1/12 of the annual basic benefit amount for which the individual would be eligible should the change in Medicaid status remain in effect for 12 calendar months. The monthly basic benefit limit will be applied each month for the remainder of the plan year in which the individual's change in Medicaid eligibility occurred, from the date the change occurred.

(B) In the case of an individual with an ISP developed for a partial plan year, the monthly basic benefit limit will be 1/12 of the annual basic benefit amount for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly basic benefit limit will be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Individual plan costs. Estimates of individual plan costs must be based on written guidelines for costs of frequently used services published and updated periodically by SPD.

(A) SPD guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the brokerage's own documented survey.

(B) The brokerage must establish a process for review and approval of all budgets based on estimates exceeding published guidelines and must monitor the approved individual plans involved for continued cost effectiveness.

(4) **EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS.** Exceptions to the basic benefit annual support services fund limit may be only as follows.

(a) Extraordinary long-term need. Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory, Form DHS 0203 may have access to more than the basic benefit support services fund limit in order to purchase necessary supports. The Basic Supplement Criteria Inventory, Form DHS 0203, specifies scoring levels and applicable maximum available funding.

(A) For Medicaid recipients choosing services under the Support Services Waiver, the supplement to the basic benefit must result in a plan year cost that is less than the minimum allowable plan year cost for comprehensive in-home support services in the same biennium.

(B) For individuals who are not Medicaid recipients choosing services under the Support Services Waiver, the supplement to the basic benefit must result in a plan year cost that is less than the state's General Fund contribution to the minimum allowable plan year cost for in-home comprehensive services in the same biennium, calculated according to the Medicaid match rate current at the beginning of the plan year and adjusted annually to correspond to changes in the Medicaid match rates.

(C) The brokerage director, or a designee from brokerage management and administration, must administer the basic supplement criteria only after receiving SPD-approved training. The brokerage director or designee must score basic supplement criteria according to written and verbal instruction received from SPD.

(D) The trained brokerage director must administer the basic supplement criteria within 30 calendar days of the written request of the individual or the individual's legal representative.

(E) The brokerage director or designee must send written notice of findings regarding eligibility for a supplement to the basic benefit to the

individual and the individual's legal representative within 45 calendar days of the written request for a supplement. This written notice must include:

(i) An offer for the individual and individual's legal representative to discuss the findings in person with the director and with the individual's personal agent in attendance if desired; and

(ii) A notice of grievance processes under OAR 411-340-0060.

(F) Annual ISP reviews for recipients of the supplement must include a review of circumstances and resources to confirm continued need.

(b) Transfers from employment and alternative to employment, and self-directed support services according to SPD-designated schedule of group enrollments under OAR 411-340-0110(3). Support service fund expenditures for individuals enrolled in these services prior to the designated date of group enrollment in brokerages may, for a limited amount of time, exceed the basic benefit financial limits. To qualify, individuals must be enrolled in employment and alternative to employment services regulated by OAR chapter 411, division 345, or receive self-directed support services during the month prior to enrollment in a brokerage and SPD's annual cost of this previous service must exceed the financial assistance available through the basic benefit.

(A) Each qualified individual transferring from employment and alternative to employment services beginning November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to SPD's previous cost for the individual in these services, as negotiated according to SPD guidelines, for no more than 365 calendar days from date of enrollment in the brokerage.

(B) Each qualified individual transferring from employment and alternative to employment services beginning July 1, 2003, and who does not have any other SPD-paid residential support services prior to that date, may have access to support services funds in an amount each month equal to SPD's previous employment and alternative to employment monthly costs for the individual, as negotiated according to SPD guidelines:

(i) For 365 days, if the individual is a Medicaid recipient eligible for waiver services; or

(ii) For 180 days, if the individual is not a Medicaid recipient eligible for waiver services.

(C) Each qualified individual transferring from self-directed support services beginning November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to financial assistance authorized by the individual's current Self-Directed Support Plan for no more than 365 calendar days from date of enrollment in the brokerage when the individual is a Medicaid recipient choosing to receive waiver services and for no more than 90 calendar days from date of enrollment in the brokerage when the individual is not Medicaid-eligible or does not otherwise receive Medicaid benefits.

(D) Upon individual enrollment in the brokerage, the brokerage must fully inform the individual and the individual's legal representative of the time limit for the supplement to the basic benefit.

(E) The brokerage must complete an assessment, identify resources and develop a new individualized plan and budget during this period with a goal of reducing support services fund annual costs to less than or equal to financial assistance available in the basic benefit.

(F) At any point during the individual's first year of enrollment in the brokerage that annual plan costs are successfully reduced to a cost less than or equal to that available in the basic benefit, the individual's new plan year will begin on the date the revised ISP is authorized for implementation by the individual's CDDP support specialist.

(c) Prior-authorized crisis or diversion services. Individuals who have been assessed as in need of, and meeting criteria for, crisis or diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160 may receive short-term assistance with purchase of support in excess of the basic benefit. Use of crisis or diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Program responsible for the individual's county of residence.

(A) Funds associated with crisis or diversion services may be used to pay the difference in cost between the authorized ISP and budget in place at the time the individual is determined eligible for crisis or diversion services, and the supports authorized by either the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for crisis or diversion services in the individual's county of residence, depending on the source of crisis or diversion services funds, to meet the short-term need.

(B) Although costs for crisis or diversion services may bring the individual's total plan year cost temporarily at or above the minimum allowable plan year cost of in-home comprehensive services in the same biennium, in no case may the individual's costs exceed the state's current ICF/MR daily cost per individual nor may plan year expenses at or above the minimum for comprehensive services make the individual eligible for comprehensive services.

(i) Individuals placed in emergent status due to receiving crisis or diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive support services from, the bro-

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kerage while both crisis or diversion services and support services are required to stabilize and maintain the individual at home or in the family home. In no case, however, may the individual remain enrolled in the brokerage under emergent status for more than 270 consecutive days in any 12-month period.

(ii) The individual's personal agent must participate with CDDP or regional crisis or diversion staff in efforts to stabilize supports and return costs to the basic benefit or approved supplement levels, documenting reviews of effectiveness at least every 90 days while the individual is receiving crisis or diversion services.

(d) Conversions from other SPD-regulated services. Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through SPD contract from a SPD-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to enrollment in a brokerage, may have access to the amount specified in the SPD contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions described in section (4)(b) of this rule.

(A) Individual plan year costs must always be less than the minimum allowable plan year cost for in-home comprehensive services in the same biennium; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(e) Funds designated for services to individuals eligible for, and at imminent risk of, civil commitment under ORS chapter 427. Individuals whose support funds were specifically assigned through SPD contract to self-directed support services prior to the date designated by SPD for transfer of the individual from self-directed support services to a brokerage may have access to the amount specified in the SPD contract as available for the individual's use.

(A) Individual plan year costs must always be less than the minimum allowable plan year cost for in-home comprehensive services in the same biennium; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(f) Individuals transferring from SPD waiver services for the Aged and Adults with Physical Disabilities. Individuals transferring from SPD's Home and Community-Based Waiver services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds, in accordance with OAR 411-015-0015(4)(c) will have limited access to support services funds, as described in these rules. The amount of support services funds available will be equal to SPD's previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins the date the individual starts receiving support services exclusively through a brokerage.

(g) Supplemental needs for activities of daily living (ADL). For Medicaid recipients eligible for and choosing services under the Support Services Waiver, individuals with additional assistance needs in ADLs may have access to an additional \$2,605 per year, prorated as needed, to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. The services include:

- (i) Basic personal hygiene;
- (ii) Toileting, bowel and bladder care;
- (iii) Mobility, transfers and comfort;
- (iv) Planning and preparing nutritious meals and assuring adequate fluid intake;

(v) Assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions and reminding appropriate persons when prescriptions need to be filled;

- (vi) Maintaining clean oxygen equipment and supply; and
- (vii) Delegated nursing tasks.

(B) Incidental activities. ADL services may include the following activities if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

- (i) Light housekeeping tasks necessary to maintain a healthy and safe environment;
- (ii) Arranging for necessary medical appointments;
- (iii) Observation of an individual's status and reporting of significant changes to appropriate people;
- (iv) First aid and handling emergencies; and

(v) Extra support due to mental retardation or developmental disability.

(C) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(D) Planned expenses must be based upon the least costly means of providing adequate services, and must only be to the extent necessary to meet the documented ADL needs.

(E) Supplemental needs for ADL's cannot cause the cost per any plan year to exceed the minimum allowable plan year cost for comprehensive in-home support services in the same biennium, except individuals receiving both support services under these rules as of June 30, 2005 and state plan personal care services under OAR chapter 411, division 034 whose total combined annual costs exceed the minimum allowable plan year cost for comprehensive in-home support services in the same biennium may continue to develop future annual ISPs based on the budgeted annual cost amount until the individual terminates their receipt of support services.

(F) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural support system of relatives, friends, neighbors or other available sources of support.

(G) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Resource Assessment Plan and Authorization, Form MSC 0531, will serve as the individual's approved plan of care for a period not to exceed 90 days.

(5) AMOUNT, METHOD AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an ISP that has been signed by the individual or the individual's legal representative and approved for implementation by the CDDP support specialist. The brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with support services funds are:

- (a) Chore services ;
- (b) Community inclusion supports;
- (c) Community living supports;
- (d) Environmental accessibility adaptation;
- (e) Family training ;
- (f) Homemaker services ;
- (g) Occupational therapy services;
- (h) Personal emergency response systems;
- (i) Physical therapy services;
- (j) Respite care;
- (k) Special diets;
- (l) Specialized medical equipment and supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, then purchase, rental, or repair with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and, specifically, those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by the State Medicaid Plan or private insurance, and the denial has been upheld in an applicable Medicaid Fair Hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that can be purchased for this purpose must be of direct benefit to the individual and include:

- (i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);
- (ii) Adaptive beds;
- (iii) Positioning devices;
- (iv) Specially designed clothes to meet the unique needs of the individual with the disability, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);
- (v) Assistive technology items;
- (vi) Computer software used by the individual to express needs, control supports, plan and budget supports;

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(vii) Augmentative communication devices;
(viii) Environmental adaptations to control lights, heat, stove, etc.; or
(ix) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

- (m) Specialized supports;
- (n) Speech and language therapy services;
- (o) Supported employment ; and
- (p) Transportation.

(7) CONDITIONS OF PURCHASE. The brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction about the limits and conditions of such arrangements;

(B) Combined support services funds cannot be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one individual;

(D) Combined arrangements for community inclusion or supported employment services that result in creation of a provider organization must be certified according to these rules; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

- (A) Represents a risk to health and safety of the individual or others;
- (B) Is likely to continue to become more serious over time;
- (C) Interferes with community participation;
- (D) Results in damage to property; or
- (E) Interferes with learning, socializing or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES. When support services funds are used to purchase services, training, supervision or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse;

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision and that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment;

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP;

(d) The provisions of section (9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing or dispensing a controlled substance;

(C) Surrendered their professional license or had his or her professional license suspended, revoked or otherwise limited;

(D) Failed to safely and adequately provide the services authorized;
(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any DHS or brokerage investigation, or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of section (8) of this rule or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by another division within DHS.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the brokerage or SPD, as applicable; or

(C) The brokerage may withhold payments to the provider.

(c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Assistant Director of SPD.

(e) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by SPD within 30 days of the date the sanction notice was mailed to the provider.

(f) At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0140

Using Support Services Funds for Certain Purchases Is Prohibited

Support services funds must not be used to pay for:

(1) Services, materials, or activities that are illegal;

(2) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 411-340-0020;

(3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(4) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(5) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(6) Individual or family vehicles;

(7) Health and medical costs that the general public normally must pay, including:

(a) Medications;

(b) Health insurance co-payments;

(c) Dental treatments and appliances;

(d) Medical treatments;

(e) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

(f) Treatment supplies not related to nutrition, incontinence, or infection control;

(8) Ambulance services;

(9) Legal fees;

(10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(11) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(12) Services, activities, materials, or equipment that are not necessary or cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(13) Educational services for school-age individuals over the age 18, including professional instruction, formal training and tutoring in communication, socialization, and academic skills, and post-secondary education-

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al services such as those provided through two- or four-year colleges for individuals of all ages;

(14) Services, activities, materials, or equipment that can be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;

(15) Unless under certain conditions and limits specified in rate-setting guidelines published by SPD, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(16) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(17) Services when there is sufficient evidence to believe that the individual or individual's representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services; or

(18) Services that, in the opinion of the individual's personal agent, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an individual, including but not limited to the failure to provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person. However, no individual may be deemed neglected for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0150

Standards for Support Services Brokerage Administration and Operations

(1) **POLICY OVERSIGHT GROUP.** The brokerage must develop and implement procedures for incorporating the direction, guidance and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint or grievance resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) **FULL-TIME BROKERAGE DIRECTOR REQUIRED.** The brokerage must employ a full-time director who is responsible for daily brokerage operations in compliance with these rules and has authority to make budget, staffing, policy and procedural decisions for the brokerage.

(3) **DIRECTOR QUALIFICATIONS.** In addition to the general staff qualifications of OAR 411-340-0070(1) through (2), the brokerage director must have:

(a) A minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or

(b) Six years of experience, including supervision, in the field of developmental disabilities or a social service or mental health field.

(4) **FISCAL INTERMEDIARY REQUIREMENTS.**

(a) Persons or entities providing fiscal intermediary services must:

(A) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to

effectively manage the brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in ISPs;

(b) Contractor and employee qualifications. The brokerage must obtain and maintain written evidence that:

(A) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(B) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training and experience.

(5) **PERSONAL AGENT QUALIFICATIONS.** Each personal agent must have:

(a) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(b) Five years of equivalent training and work experience related to developmental disabilities; and

(c) Knowledge of the public service system for developmental disability services in Oregon.

(A) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in sections (5)(a) through (5)(c) of this rule may perform those functions only with prior approval of a variance by SPD. Prior to employment of a person not meeting minimum qualifications for personal agent, the brokerage must submit a written variance request to SPD. The request must include:

(i) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(ii) A proposed alternative plan for education and training to correct the deficiencies. The proposal must specify activities, timelines and responsibility for costs incurred in completing the plan.

(B) A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(6) **SEPERATION OF DUTIES.** When a CDDP operates a brokerage:

(a) Support specialist and personal agent activities, responsibilities, and costs must be clearly separated and delineated in individual files, staff job descriptions, and CDDP financial and service reports; and

(b) The individual's personal agent must not also be the individual's support specialist.

(7) **PERSONAL AGENT TRAINING.** The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including, but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary functions;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support budgets; and

(i) Assisting individuals to judge and improve quality of personal supports.

(8) **INDIVIDUAL RECORD REQUIREMENTS.** The brokerage must maintain current, up-to-date records for each individual served and must make these records available on request for SPD review. These records must include, at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal guardian or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and plan year anniversary date;

(c) Documents related to determining eligibility for brokerage services and the amount of support services funds available to the individual, including basic supplement criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180;

(e) Documentation, signed by the individual or individual's legal representative, that the individual or individual's legal representative has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) Assessments used to determine supports required, preferences and resources;

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- (h) Individual Support Plan and reviews;
- (i) Personal agent correspondence and notes related to resource development and plan outcomes; and
- (j) Information about individual satisfaction with personal supports and the brokerage services.

(9) **SPECIAL RECORDS REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.** The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include, but may not be limited to:

- (a) Minimum acceptable records of expenditures;
 - (A) Itemized invoices and receipts to record purchase of any single item that costs \$25.00 or more;
 - (B) A trip log indicating purpose, date and total miles to verify vehicle mileage reimbursement;
 - (C) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and
 - (D) Pay records, including timesheets signed by both employee and employer, to record employee services.
- (b) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations.

(A) When equipment is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

(B) The brokerage must secure use of equipment or furnishings costing more than \$500 through a written agreement between the brokerage and the individual or individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged or sold within that time period.

(C) The brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5,000 or more per single instance or cumulatively over several modifications:

- (i) Are approved by SPD before work begins and before final payment is made;
- (ii) Are completed or supervised by a contractor licensed and bonded in Oregon; and
- (iii) That steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

(D) The brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(c) Return of purchased goods. Any goods purchased with support services funds that are not used according to an ISP or according to an agreement securing the state's use may be immediately recovered. Failure to furnish written documentation upon written request from SPD, the Oregon Department of Justice, Medicaid Fraud Centers for Medicare and Medicaid Services, or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(10) QUALITY ASSURANCE.

(a) The brokerage Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The plan must include a written statement of values, organizational outcomes, activities and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the brokerage to changing needs and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by SPD.

(11) BROKERAGE REFERRAL TO AFFILIATED ENTITIES.

(a) When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services an individual may purchase with private or support services funds, brokerage staff must not refer, recommend or otherwise support the individual to utilize this entity to provide services unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services will be cost-effective and best-suited to provide those services determined by the individual to be the most effective

and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity of which the brokerage is a part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the brokerage and the potential provider;

(B) Provision of information about all other potential providers to the individual without bias;

(C) A process for arriving at the option for selecting the provider;

(D) Verification of the fact that the providers were freely chosen among all alternatives;

(E) Collection and review of data on services, purchased by an individual enrolled in the brokerage, by an entity of which the brokerage is a part or otherwise directly affiliated; and

(F) Training of personal agents and individuals in issues related to selection of providers.

(12) **GENERAL OPERATING POLICIES AND PRACTICES.** The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0160

Standards for Independent Providers Paid with Support Services Funds

(1) **GENERAL INDEPENDENT PROVIDER QUALIFICATIONS.** Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative to provide homemaker, respite, habilitation, transportation, chore, family training, occupational therapy, physical therapy, speech and language, dietician, or specialized supports must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current DHS policy and procedures for review of criminal history;

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the ISP, with such demonstration confirmed in writing by the individual or individual's legal representative and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(2) **BEHAVIOR CONSULTANTS.** Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(c) Submit a resume to the brokerage indicating at least one of the following:

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(A) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) **SOCIAL OR SEXUAL CONSULTANTS.** Social or sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social or sexual consultation services; and

(b) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Social Work, Counseling or other behavioral science field and at least one year of experience with people with developmental disabilities; or

(B) Three years experience with people with developmental disabilities who present social or sexual issues and at least one year of that experience must include providing the services of a social or sexual consultant.

(4) **NURSING CONSULTANTS.** Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

(5) **ENVIRONMENTAL MODIFICATION CONSULTANTS.** Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans that will make the home safe and accessible for the individual.

(6) **ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS.** Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(7) **FAMILY TRAINING PROVIDERS.** Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(8) **DIETICIANS.** Dietitians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0170

Standards for Provider Organizations Paid with Support Services Funds

(1) **PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.** A provider organization's license under OAR chapter 411, division 325 for 24-hour residential services, or OAR chapter 411, division 360 for adult foster homes, or certified under OAR chapter 411, division 345, employment and alternatives to employment services, or OAR 309-041-0550 through OAR 309-041-0830, supported living services, may not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, or emergent services.

(a) Current license or certification may be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise and train qualified staff;

(B) Provide services according to Individual Support Plans; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider organizations must assure that all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet standards for qualification of independent providers outlined in OAR 411-340-0160.

(c) Provider organizations developing new sites, owned or leased by the provider organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with support services funds, must meet the conditions of section (2)(f) of this rule in each such site.

(2) **PROVIDER ORGANIZATIONS REQUIRING CERTIFICATION.** A provider organization without current license under OAR chapter 411, division 325 for 24-hour residential services, or chapter 411, division 360 for adult foster homes, or current certification under chapter 411, division 345, employment and alternatives to employment services, or 309-041-0550 through 309-041-0830, supported living services, must be certified as a provider organization according to these rules prior to selection for providing services listed in OAR 411-340-0130(6)(a) through (6)(p) and paid for with support services funds.

(a) Basic policies and procedures required. The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including, but not limited to:

(A) Policies and procedures required in OAR 411-340-0040, 411-340-0050, 411-340-0070, 411-340-0080 and 411-340-0090 related to abuse and unusual incidents, inspections and investigations, personnel policies and practices, records, and variances.

(B) Individual rights. The provider organization must have and implement written policies and procedures that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation that may include, but is not limited to:

(I) Staff borrowing from or loaning money to individuals;

(II) Witnessing wills in which the staff or provider organization is beneficiary; or

(III) Adding the staff member or provider organization name to the individual's bank account or other personal property without approval of the individual or individual's legal representative.

(C) Complaints. The provider organization must implement written policies and procedures for individuals' complaints. These policies and procedures must, at a minimum, provide for:

(i) Receipt of complaints from an individual or others acting on the individual's behalf. If the complaint is associated in any way with abuse or the violation of the individual's rights, the recipient of the complaint must immediately report the issue to the provider organization director and the CDDP;

(ii) Investigation of the facts support or disproving the complaint;

(iii) Taking appropriate actions on complaints within five working days following receipt of the complaints;

(iv) Submission to the provider organization director. If the complaint is not resolved it must be submitted to the provider organization director for review. Such review must be completed and a written response provided within 15 days;

(v) Submission to the brokerage. All complaints received from an individual or others acting on the individual's behalf must be reported to the appropriate brokerage; and

(vi) Notification. Upon entry into the program and annually thereafter, the provider organization must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate for the individual's needs and abilities, of the provider organization complaint policy and procedures.

(D) Policies and procedures appropriate to scope of service, including but not limited to those required to meet minimum standards set forth in sections (2)(f) through (2)(k) of this rule and consistent with written service agreements for individuals currently receiving services.

(b) Written service agreement. The provider organization must develop a written service agreement with the individual or individual's legal representative and must deliver services according to that agreement. The written service agreement must be consistent with the ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services and expected outcomes of services; and

(C) Any specific individual health, safety and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the provider organization.

(c) Individual records. The provider organization must maintain a current record for each individual receiving services. The record must include:

(A) The individual's name, current home address and home phone number;

(B) Current written service agreement, signed and dated by the individual or individual's legal representative;

(C) Contact information for the legal representative and any other persons designated by the individual or individual's representative to be contacted in case of incident or emergency;

(D) Contact information for the brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

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(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors or volunteers must have:

(A) Current CPR and first aid certification, obtained from a recognized training agency prior to working alone with an individual; and

(B) Written documentation of a TB test within two weeks of being engaged by the provider organization to provide services.

(e) General training requirements. The provider organization must ensure that employees, contractors and volunteers receive training appropriate to scope of the provider organization's services.

(f) Additional standards for services provided in provider organization owned or leased site. Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites must meet the following minimum requirements:

(A) Written Plan. A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information.

(i) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, must be posted by designated telephones; and

(ii) The telephone numbers of the provider organization director, and other persons to be contacted in case of emergency must be posted by designated telephones.

(C) Quarterly safety review. A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. These reports must be kept in a central location by the provider organization for three years.

(D) Emergency evacuations. The provider organization must train all individuals when they begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each provider organization must conduct an unannounced evacuation drill each month when individuals are present.

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the provider organization for at least two years following the drill. It must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or individual's legal representative and the provider organization director; and

(II) Be presented as a variance request per OAR 411-340-0090.

(E) Adaptations required for sensory or physically impaired. The provider organization must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) Health and safety inspections. The provider organization must assure that at least once every three years a health and safety inspection is conducted.

(i) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices and storage areas.

(ii) The inspection must be performed by:

(I) The Oregon Occupational Safety and Health Department;

(II) The provider organization's worker's compensation insurance carrier; or

(III) An appropriate expert such as a licensed safety engineer or consultant as approved by the SPD; and

(IV) The Oregon Public Health Division, when necessary.

(iii) The inspection must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used by the service;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

(G) Fire and life safety inspections for owned, leased, or rented buildings and property. The provider organization must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Staffing requirements.

(i) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present.

(ii) When individuals are present, staff must have the following minimum skills and training:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical needs identified in the individual service agreement; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention needs as identified in individual service agreements.

(g) Additional standards for assisting individuals with health and medical needs. Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing:

(i) Emergency medical intervention;

(ii) Treatment and documentation of illness and health care concerns;

(iii) Administering, storing and disposing of prescription and non-prescription drugs including self administration;

(iv) Emergency medical procedures including the handling of bodily fluids; and

(v) Confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes:

(i) Health status;

(ii) Changes in health status observed during hours of service;

(iii) Any remedial and corrective action required and when such actions were taken if occurring during hours of service; and

(iv) A description of any restrictions on activities due to medical limitations.

(C) If providing medication administration when the individual is unable to self-administer medications and there is no other responsible person present who can lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed;

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders; and

(vi) Not administer unused, discontinued, outdated or recalled drugs.

(D) If required to maintain a MAR, the MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of administrative review by the provider organization director.

(E) Safeguards to prevent adverse medications reactions must be utilized that include:

(i) Maintaining information about the effects and side-effects of medications the provider organization has agreed to administer;

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(ii) Communicating any concerns regarding any medication usage, effectiveness or effects to the individual, individual's designee, or individual's legal representative; and

(iii) Prohibiting the use of one individual's medications by another.

(F) A record of visits to medical professionals, consultants or therapists if facilitated or provided by the provider organization.

(h) Additional standards for providing transportation. Provider organizations that own or operate vehicles that transport individuals must:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers;

(D) Carry in vehicles a fire extinguisher and first aid kit; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) Additional standards for assisting an individual to manage personal funds. If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the provider organization or another individual's funds, or the provider organization becoming an individual's guardian or conservator; and

(B) The provider organization's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the provider organization, or of any funds within the custody of the provider organization that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) Written policy. The provider organization must have and implement a written policy concerning behavior intervention procedures. The provider organization must inform the individual and individual's legal representative of the behavior intervention policy and procedures prior to finalizing the written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice and must be:

(i) Approved in writing by the individual or the individual's legal representative; and

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences.

(k) Additional standards for supports that involve restraints.

(A) The provider organization must only employ physical restraint:

(i) As part of an ISP;

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Staff training. Provider organization staff members who need to apply restraint under an individual's service agreement must be trained by a SPD-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(C) Physical restraints in emergency situations. Physical restraints in emergency situations must:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the provider organization director, or individual's physician;

(iii) Be authorized within one hour of application of restraint;

(iv) Result in the immediate notification of the individual's designee or legal representative; and

(v) Prompt a review of the written service agreement, initiated by the provider organization, if used more than three times in a six month period.

(D) Physical restraint must be designed to avoid physical injury to the individual or others, and to minimize physical and psychological discomfort.

(E) Incident report. All use of physical restraint must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

(i) The name of the individual to whom the restraint is applied;

(ii) The date, type and length of time, of restraint application;

(iii) The name and position of the person authorizing the use of the restraint;

(iv) The name of the staff member applying the restraint; and

(v) Description of the incident.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

411-340-0180

Standards for General Business Providers

(1) General Business Providers providing services to individuals and paid with support services funds must hold any current license appropriate to function required by the State of Oregon or federal law or regulation, including but not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board or chapter 808, Landscape Contractors, as applicable, for a provider of environmental accessibility adaptations;

(d) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon;

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment;

(f) A current business license for providers of personal emergency response systems; and

(g) Retail business licenses for vendors and supply companies providing specialized diets.

(2) Services provided and paid for with support services funds must be limited to those within the scope of the general business provider's license.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1920, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08

Rule Caption: Community Health Support Program Registered Nurse Services.

Adm. Order No.: SPD 9-2008(Temp)

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08 thru 12-28-08

Notice Publication Date:

Rules Amended: 411-048-0000, 411-048-0010, 411-048-0020, 411-048-0030, 411-048-0040, 411-048-0050, 411-048-0060, 411-048-0070, 411-048-0080, 411-048-0100, 411-048-0120, 411-048-0130

Subject: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is temporarily amending the Community Health Support Program (CHSP) Registered Nurse Services rules set forth within OAR chapter 411, division 48 to:

- Reflect housekeeping, name, term and operation changes made to CHSP registered nurse services (formerly contract registered nurse services);

- Maintain consistency with changes made to the contracts for CHSP registered nurse services that become effective July 1, 2008;

- Improve the timeliness of reporting; and

- Update the requirements of CHSP registered nurse services.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-048-0000

Purpose

The purpose of these rules is to establish Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) standards and procedures for Community Health Support Program (CHSP) registered nurse (RN) services. DHS contracts with registered nurses to provide services to elderly individuals, adults with physical disabilities and individuals with developmental disabilities who are eligible to receive long term care services per OAR chapter 411, division 015 and chapter 411, division 320. Individuals receiving personal care services per OAR chapter 411, division 034 are eligible for CHSP RN services if an SPD funded case manager authorizes the services. CHSP RN services are provided in adult foster homes, foster homes serving children with developmental disabilities and in-home settings. CHSP RN services do not replace or substitute for nursing services required under rules for licensed facilities, or in situations where individuals have access to licensed nursing services by the use of their support services brokerages.

Stat. Auth.: ORS 410.070

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Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 11-2005, f. 7-28-05, cert. ef. 8-1-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0010

Definitions

(1) "Abuse" means one or more of the following:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to:

(A) Any sexual contact with an individual; or

(B) Unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the individual.

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being; and

(f) Financial exploitation.

(2) "Case Manager" means a person employed by the Department of Human Services, or its contractors, who assesses the service needs of an individual, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan and monitors the services delivered.

(3) "Community Health Support Program Registered Nurse Evaluation (CHSP RN Evaluation)" means the systematic collection of data about an individual for the purpose of judging that individual's health or illness status and actual or potential health care needs.

(4) "Community Health Support Program (CHSP) Manual" means the manual provided by the Seniors and People with Disabilities Division that gives information and guidelines regarding the role and expectations for Community Health Support Program registered nurse services.

(5) "Delegation" means that a registered nurse authorizes a non-family service provider to perform a specific task of nursing services in a selected situation. Delegation may occur only after the registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(6) "DHS" or "Department" means the Department of Human Services.

(7) "Documentation" means the written record of Community Health Support Program registered nurse services provided for the individual.

(8) "Foster Home" means any Department of Human Services licensed or certified family home or other facility in which residential service is provided for compensation to five or fewer elderly individuals, individuals with physical disabilities, or individuals with developmental disabilities who are not related to the provider by blood or marriage.

(9) "Individual" means a client in the community for whom the Department of Human Services pays for services and for whom case management services are provided per OAR chapter 411, division 015, chapter 411, division 034 or chapter 411, division 320. "Client" is synonymous with individual.

(10) "Local Office" means the entity under contract with the Department of Human Services, or a local health authority, responsible for the planning and delivery of services for individuals in a specific geographical area of the state.

(11) "Oregon State Board of Nursing (OSBN)" means the agency responsible for regulating nursing practice and education for the purpose of protecting the public's health, safety and well-being.

(12) "Rate Schedule" means the rate schedule published by the Seniors and People with Disabilities Division at: <http://www.oregon.gov/DHS/spd/provtools/rateschedule.pdf>.

(13) "Service" means assistance with activities of daily living, medication management and delegated nursing tasks. Service also means services provided to maximize individual independence, health and safety.

(14) "Service Provider" means any person (excluding licensed health professionals) responsible for providing services to the individual at home, or in a foster home.

(15) "SPD" or "Division" means the Seniors and People with Disabilities Division, within the Department of Human Services.

(16) "Specialty Provider" means health care providers such as home health, hospice, mental health, physicians, pharmacists or hospitals.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0020

Community Health Support Program Registered Nurse Services

CHSP RN services maintain individuals at functional levels of well-being, minimize health risks, and maximize the strengths of the individual and the service provider while promoting individual autonomy and self management of health care.

(1) The CHSP RN is a Medicaid provider and is not considered an employee of the state or local office. All CHSP RN contracts are issued and held by SPD.

(2) The CHSP RN provides evaluation, health care planning, teaching, monitoring, and coordination of health-related functions for individuals under the authorization of local office case managers. The CHSP RN does not provide direct services to an individual.

(3) CHSP RN services adhere to the practice of nursing governed by the OSBN.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0030

Minimum Qualifications for the Community Health Support Program Registered Nurse

A CHSP RN must have the following:

(1) A current, unencumbered, license from the OSBN as a registered nurse. The RN must not be a current participant in the OSBN Nurse Monitoring Program for substance abuse (OAR chapter 851, division 046).

(2) Found suitable for providing CHSP RN services by passing a criminal history check as described in OAR chapter 407, division 007.

(3) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>).

(4) Employment history, education, and professional references that demonstrate skills, knowledge, and experience in the following areas:

(a) Individual health evaluations;

(b) Documentation of health evaluations and health care plans;

(c) Teaching; and

(d) The ability to work independently.

(5) Two years of RN experience with one or more of the following groups of people:

(a) Seniors;

(b) Individuals with physical disabilities; or

(c) Individuals with developmental disabilities.

(6) One year of hospital or skilled nursing facility experience.

(7) Availability to work a minimum of 16 hours per month.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0040

Community Health Support Program Registered Nurse Enrollment & Contracting

(1) In accordance with the CHSP manual, a nurse requesting a CHSP RN contract must submit the following documents to the local office:

(a) A current, unencumbered, license from the OSBN as a RN;

(b) Certification of professional liability insurance for RN practice;

(c) Certification of general liability insurance naming DHS as the additional insured; and

(d) Verification of automobile insurance.

(2) The CHSP RN may not provide nursing services after the expiration date listed on the Oregon RN license.

(3) The CHSP RN must keep all insurance coverage current and submit copies of professional and general liability certificates of insurance renewals to the local office.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0050

Responsibilities of the Community Health Support Program Registered Nurse

In accordance with the scope of practice as stated in the administrative rules for the OSBN and the CHSP manual, the CHSP RN is responsible for the following activities:

(1) CHSP RN EVALUATION. The CHSP RN must perform a CHSP RN evaluation following the acceptance of the case manager's referral of an individual for CHSP RN services. The data collected during the CHSP RN evaluation process provides the basis for the individual's health care plan. A CHSP RN evaluation includes:

(a) Information about the whole individual including the physical, psychological, social, cultural and spiritual aspects of the individual;

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(b) A nursing history and appraisal of the individual's health or illness through interview, physical evaluation and information from family or significant others and pertinent information from the individual's past health or medical record;

(c) An evaluation of the environment as it relates to the health and safety of the individual; and

(d) The ability of the service provider to meet the individual's health care needs.

(2) **MEDICATION REVIEW.** At every individual visit, the CHSP RN must review the individual's medication regime, medication administration and medication records (as applicable).

(3) **HEALTH CARE PLAN.** Based on the CHSP RN evaluation of the individual, the individual's wishes, and the service provider's ability to provide services for the individual, the CHSP RN must document a health care plan. A health care plan is separate from the case manager's service plan and the service plan that service providers are required to develop. The CHSP RN must review the health care plan and desired outcomes with the individual, the service provider and the case manager.

(4) **VISITATION PLAN.** The CHSP RN must develop a visitation plan based on the CHSP RN evaluation and identified health needs, individual teaching needs, and the service provider's teaching needs. The visitation plan must:

(a) Include the projected number and type of nursing services needed by the individual during a six-month period; and

(b) Be reviewed and authorized by the case manager on a biannual basis or more frequently as indicated by the individual's condition. Should the case manager disagree with the visitation plan, the local office manager must review the CHSP RN's justification for continued nursing visits and will make a final decision.

(5) **DELEGATION.** The CHSP RN is responsible for delegation and documentation of tasks of nursing services as regulated by OAR chapter 851, division 047. The CHSP RN, alone, based on professional judgment and regulation, makes the determination to delegate or not delegate a task of nursing services, or rescind a delegation.

(6) **TEACHING.** The CHSP RN is responsible for teaching the individual or service provider how to help meet the individual's health care needs. The CHSP RN is also responsible for following OAR 851-047-0000 and 851-047-0020 regarding the teaching of medication administration.

(7) **MONITORING VISITS AND UPDATE OF THE HEALTH CARE PLAN.**

(a) The CHSP RN must make monitoring visits to the individual based on the health care and visitation plan, or as the individual's condition changes.

(b) During the monitoring visit, the CHSP RN must update the health care plan following any identified changes in individual status.

(8) **REASSESSMENT.** The CHSP RN must perform a reassessment and update the health care plan when the individual has experienced a significant change in condition.

(9) **COORDINATION WITH HEALTH AND OTHER SPECIALTY PROVIDERS.**

(a) If the CHSP RN determines the individual would benefit from the services of other health care or specialty providers, the CHSP RN must contact the case manager and discuss arrangements for coordinating the services.

(b) CHSP RNs must document any communication or change in services resulting from this coordination of health care services.

(c) The CHSP RN must provide information and a health care plan to involved providers and specialists within confidentiality parameters.

(d) If an individual's condition becomes unstable or an individual becomes eligible for home health or hospice nursing, the physician and case manager must be contacted and a plan developed to transfer the services to another nursing program, or to coordinate services between nursing programs.

(10) **COORDINATION WITH LOCAL OFFICES.**

(a) The local offices must provide oversight of the CHSP RN service in accordance with the CHSP manual.

(b) The CHSP RN and the case manager must maintain communication and coordination regarding the individual according to time lines and procedures, as defined in the CHSP manual.

(c) The CHSP RN must immediately communicate abuse, neglect, life-threatening health and safety concerns to the local office protective service worker or case manager, according to local office policy.

(d) For critical issues other than health and safety, such as a change in the stability of an individual's condition, the CHSP RN must notify the case manager immediately.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0060

Compliance

(1) **MANDATORY REPORTING.** While acting in an official capacity, CHSP RNs are mandatory reporters and are required by law to report suspected or known abuse or neglect of the elderly (ORS 124.050-095), adults with developmental disabilities or mental illness (ORS 430.735-765), and people in nursing facilities (ORS 441.630-680). By law (ORS 419B.005-045), RNs must also report suspected or known abuse of children under the age of 18, 24 hours a day, seven days a week. In addition, under these rules the CHSP RN is encouraged to report, to the local office or police, any suspected abuse or neglect of any individuals served by DHS.

(2) **CONFIDENTIALITY.** The CHSP RN must adhere to the OSBN confidentiality standards as well as the Federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0070

Documentation Requirements

(1) Documentation must be completed on designated DHS forms per the CHSP manual.

(2) Documentation must reflect the nursing process and meet the standards of the OSBN and the requirements listed in the CHSP manual.

(3) Documentation of services provided by a CHSP RN must be left at the individual's place of residence by the CHSP RN.

(4) Copies of all current documentation must be sent to the case manager prior to, or at the time of, submission of invoices. Documentation must support the services billed and adhere to the time frames set forth in the CHSP manual.

(5) The CHSP RN must maintain copies of all documentation submitted to the case manager and all related nursing documentation in the individual's active nursing file. The file must be retained by the CHSP RN until the CHSP RN no longer has a nurse-client relationship with the individual, at which time the file must be sent to the local office. As per Medicaid rules, the local office must retain the nursing files for a period of seven years.

(6) All CHSP RN documentation related to individual services is the property of DHS.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0080

Education and Orientation Responsibilities

(1) The CHSP RN must attend orientation sessions, as listed in the CHSP manual.

(2) The CHSP RN must continue ongoing self-education to remain current in health and nursing-related issues.

(3) The CHSP RN must attend staff meetings, individual staffings and service coordination meetings in accordance with the CHSP manual.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0100

Local Office Responsibilities

Local offices must develop systems and protocols as defined in the CHSP manual. Systems and protocols must address the following:

(1) CHSP RN recruitment and contract requests.

(2) Requesting contract terminations.

(3) CHSP in-office orientation and field orientation with an experienced CHSP RN.

(4) Orientation for case managers regarding the CHSP RN role and the services the CHSP RN provides for individuals.

(5) A case manager CHSP RN referral and communication process.

(6) Case manager biannual (or more frequently as indicated) prior-authorization process for CHSP RN services.

(7) CHSP RN/staff meetings to ensure coordination between nursing and case management.

(8) Seven year retention of nursing files.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0120

Compensation and Billing

(1) CHSP RNs will be paid an hourly rate based on the rate schedule.

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(2) The CHSP RN must request prior-authorizations from the case managers and submit claims for individual services, utilizing billing codes per instructions in the CHSP manual.

(3) CHSP RNs must submit invoices for orientations as outlined in the CHSP manual.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDSD 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

411-048-0130

Community Health Support Program Service Limitations

(1) CHSP RN services will not be provided if an individual is:

(a) A resident of a nursing facility, assisted living facility, residential care facility, 24 hour developmental disability group home, intermediate care facility for people with developmental disabilities, or enrolled in a Staley brokerage;

(b) In a program or residing in a setting where nursing is provided under contract with SPD; or

(c) A family member of the CHSP RN.

(2) CHSP RNs do not perform local office staff functions such as protective service investigations, pre-admission screenings, eligibility determinations, case manager assessment, or corrective action activities.

(3) CHSP RN services cannot be provided as a substitute for other Medicaid or Medicare nursing services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SDSD 8-2002, f. 9-30-02, cert. ef. 10-1-02; Renumbered from 411-048-0090, SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 11-2005, f. 7-28-05, cert. ef. 8-1-05; SPD 9-2008(Temp), f. 6-27-08, cert. ef. 7-1-08 thru 12-28-08

Department of Justice

Chapter 137

Rule Caption: Clarifies requirements for applications for services ad time lines and criteria for late hearing requests.

Adm. Order No.: DOJ 10-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Amended: 137-055-1060, 137-055-1070, 137-055-2160, 137-055-5110

Subject: OAR 137-055-1060 is amended to remove the word "enforcement," to remove a reference to a supplemental form and to clarify that the notice described in section (3) will be provided.

OAR 137-055-1070 is amended to clarify that a request for services in an order must be signed. If the request is not signed, an application for services will be sent to a party. The party must sign and return the application for services to continue. The rule is also amended to clarify that income withholding will be provided without an application if a party requests it pursuant to ORS 25.381(2)(a).

OAR 137-055-2160 is amended to clarify that a request for a hearing must be received within the time allowed by law in order to be considered timely. The rule is also being amended to clarify time lines when parentage tests have been completed and the alleged father has been included as the biological father, changing response time from 14 days to 30 day to request a hearing for support. The rule as also been clarified to say that is an alleged father has requested parentage testing but fails to appear for the testing, an administrative order will be entered for his failure to appear and he will be given 14 additional days to request a hearing for support, the request for hearing will not be considered late if received within that time.

OAR 137-055-5110 is being amended to clarify that if a case is closed because a child attending school has not met certain criteria, it may be reopened if the child attending school submits the appropriate paperwork, including a signed application for services, which may be a separate document or included as a statement on the compliance forms.

Rules Coordinator: Vicki Tungate—(503) 986-6086

137-055-1060

Uniform Application for Child Support Enforcement Services

(1) The administrator will provide a standard application form to any person requesting child support enforcement services. Except for the application form, the notice required under section (3) of this rule, and any statements necessary to respond to inquiries about these forms, or as provided in OAR 137-055-5110, no other written or oral statements concerning an

applicant's qualification for services nor any contract for service will be offered.

(2) The application form must:

(a) Contain a statement that the applicant is requesting child support services;

(b) Require the applicant's signature and date of application.

(3) The administrator will provide a notice to applicants for child support enforcement services, which includes the following information:

(a) The applicant's rights and responsibilities;

(b) An explanation of enforcement activities for which fees are charged;

(c) Policies on cost recovery; and

(d) Policies on distribution and disbursement of collections.

(4) A standardized application form and the notice required under section (3) will be readily available to the public in each Child Support Program (CSP) office:

(a) The administrator will provide a standardized application form, and the notice required under section (3), upon request to any individual who requests services in person;

(b) When a request for child support enforcement services is made in writing or by telephone, the administrator will send the individual a standardized application form and the notice required under section (3), within five working days from the date the request is made.

(5) The administrator will accept an application as it is filed, on the day it is received.

(6) The administrator will create a case on the computerized system within two working days of receipt of the application providing circumstances beyond the control of the administrator do not occur.

(7) The administrator will provide the notice required under section (3) of this rule:

(a) If the requesting individual or a beneficiary of such person is not receiving assistance in the form of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority (OYA) services, along with a standard application form;

(b) If the requesting individual or a beneficiary of such person receives assistance in the form of TANF cash assistance, Medicaid, foster care or OYA services, within five working days of referral from the Department of Human Services (DHS) or the OYA.

(8) Once an application for child support services is accepted, if necessary for establishment and/or enforcement purposes, the administrator will solicit additional relevant information by means of a form approved by the CSP.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 16-1994, f. 8-4-94, cert. ef. 12-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0043; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1060; DOJ 12-2004, f. f. & cert. ef. 10-1-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 10-2008, f. & cert. ef. 7-1-08

137-055-1070

Provision of Services

(1) For the purposes of this rule, the following definitions apply:

(a) "Full services case" means a case in which the full range of support enforcement services required under ORS 25.080(4) are provided;

(b) "Limited services case" means a case in which the provisions of ORS 25.080 do not apply and one or more collection, accounting, distribution and disbursement or enforcement services are provided pursuant to state or federal law.

(2) When any Oregon judgment or support order for child and/or spousal support is received, the administrator will:

(a) If the order requires payment of child support or child and spousal support and seeks collection, accounting, distribution, disbursement and enforcement services:

(A) Create a full services case on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(B) Initiate appropriate enforcement action;

(C) Unless the order contains the signed request of a party, send the parties a standardized application form; and

(D) Send the parties the information required in OAR 137-055-1060(3);

(b) If the order requires payment of spousal support only and seeks collection, accounting, distribution, disbursement and enforcement services, process the order pursuant to OAR 137-055-2045.

(c) If the order is silent, unclear or contradictory on the services to be provided and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry if one does not already exist; and

(B) Send the parties a letter explaining that no services will be provided and why. The letter must include a statement that the parties may

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apply for support enforcement services at any time if the order includes a provision for child support.

(d) If the order seeks only payment through the Department of Justice and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry, if one does not already exist, to receive and disburse payments in accordance with OAR 137-055- 6021; and

(B) Send the parties a letter explaining that the program will only provide disbursement of support payments and why. The letter must include a statement that a party may apply for support enforcement services at any time if the order includes a provision for child support.

(e) If the order seeks only services sufficient to permit establishment of income withholding for child support or child and spousal support as provided in ORS 25.381(2)(a):

(A) Create a limited services case on the CSEAS if one does not already exist;

(B) Establish income withholding under ORS 25.378; and

(C) Receive and disburse payments in accordance with OAR 137-055-6021.

(f) If the provisions of subsection (c) or subsection (d) apply and a party subsequently completes an application or other written request for support enforcement services, the administrator will process the application or request in accordance with OAR 137-055-1060.

(3) When a person applies for services under OAR 137-055-1060 for establishment or enforcement of a child support order, the case is a full services case.

(a) The administrator will perform all mandated services under state and federal law; and

(b) The administrator will determine which non-mandated services will be provided, but may consider input from the applicant in making that determination.

(4)(a) When a person applies for services under OAR 137-055-1060 and there is more than one parent who may be obligated to pay support, the applicant may apply for services:

(A) To establish and collect support from only one parent; or

(B) To establish and collect support from more than one parent.

(b) A separate application under OAR 137-055-1060 is required for each parent the applicant wishes to pursue.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 25.080, 25.140, 25.164, 25.381 & 107.108

Hist.: AFS 20-2002, f. 12-20-02 cert. ef. 1-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1070; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1070; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 10-2008, f. & cert. ef. 7-1-08

137-055-2160

Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator.

(2) A request for hearing may be made on a form provided by the Child Support Program (CSP) and must contain the party's residence, mailing or contact address, a telephone number where the party can be contacted and the reasons for objection to the contested case notice.

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law or notice in order to be considered timely.

(4) A new or amended request for hearing is not required from the requesting party to obtain a hearing if the administrator amends the order being appealed, unless the administrator notifies the requesting party that an additional request is required.

(5) When a party requests a hearing after the time specified by the administrator, the administrator will handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) The circuit court has not approved the final order or there is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

(6) Notwithstanding the provisions of section (5) of this rule, a request for hearing is not considered a late hearing request when:

(a) Parentage testing has been conducted pursuant to OAR 137-055-3020(7)(b) which includes the man as the biological father of the child, and a request for hearing has been received from a party within 30 days from the date of service of the Notice of Intent to Enter Order/Judgment establishing paternity and the notice of parentage testing results; or

(b) A party has denied paternity and failed to appear for parentage tests, an order establishing paternity has been entered, and a request for hearing has been received from a party within 14 days from the date the order establishing paternity was mailed to the parties.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 183.415

Hist.: AFS 5-1995, f. & cert. ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; 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 461-200-2160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2160; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 10-2008, f. & cert. ef. 7-1-08

137-055-5110

Child Attending School

The purpose of this rule is to provide additional information as to how the Child Support Program (CSP) will apply the provisions of ORS 107.108 when the order or modification provides for support until the child is age 21, so long as the child is a child attending school in accordance with ORS 107.108.

(1) In addition to the definitions found in ORS 107.108, as used in OAR chapter 137, division 55, the following terms have the meanings given below:

(a) "Active member of the military" means:

(A) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces"), who is serving on active duty; or

(B) A member of the National Guard who is serving full-time National Guard state or federal active duty; or

(C) A cadet at a federal service academy.

(b) "Adult child" means a child over the age of 18 and under the age of 21, who is not married or otherwise emancipated, and is not currently a child attending school.

(c) "Child attending school" has the meaning given in ORS 107.108, except a child attending school does not include an active member of the military.

(d) "Satisfactory academic progress" means:

(A) For a child attending high school who is over age 18 but under age 21, enrollment in school and meeting attendance requirements or as defined by the school; or

(B) For a child attending post high school classes, as defined by the higher educational institution.

(2) If the obligor has not provided the child attending school with an address to send the documents required by ORS 107.108 to, the administrator, pursuant to OAR 137-055-1140(8), may release the address of record of the obligor to the child attending school. If the obligor does not provide an address to the CSP or to the child, the obligor's failure to receive required documents is not a basis for objecting that a child does not qualify as a child attending school.

(3) If there has been a finding and order of nondisclosure on behalf of the child attending school pursuant to ORS 25.020;

(a) The child may send the obligor's copy of the initial notice of intent to attend or continue to attend school to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the administrator within the time periods set out in ORS 107.108. The administrator will redact the following information prior to sending a copy of the documents otherwise required to be provided to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(b) The child attending school must contact the school each term or semester and submit to the administrator the information that the obligor could obtain from the school if there wasn't a finding and order of nondisclosure on the case. The administrator will redact the information set out in subsection (a) of this section prior to sending a copy of the documents to the obligor.

(4) If a child attending school is in the care of the Oregon Youth Authority (OYA), any and all reporting duties of the child attending school will be the duty of OYA.

(5) The Department of Justice will distribute and disburse support directly to the child attending school, unless good cause is found to distribute and disburse support in some other manner. For purposes of this section "good cause" may include:

(a) The child is in the care of OYA;

(b) The child provides written notarized authorization for distribution and disbursement to the obligee;

(c) The court, administrative law judge or administrator orders otherwise; or

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(d) The administrator is enforcing the Oregon order at the request of another state and that state has indicated they are unable to distribute and disburse support directly to the child.

(6)(a) If the administrator makes a finding that the support payment should be distributed and disbursed to the obligee under subsection (5)(b), the administrator will send a notice of redirection of support to the parties.

(b) A party may contest the administrator's finding as provided in ORS 183.484.

(7) An objection based on the requirements of ORS 107.108 may be made by any party to the support order.

(a) Unless new supporting documentation can be provided, an objection can only be made once per semester or term as defined by the school, or three months from the date of a previous objection if the school does not have semesters or terms.

(b) A party may contest the administrator's finding from the objection as provided in ORS 183.484.

(8) When support has been suspended under ORS 107.108, if the case has been closed pursuant to OAR 137-055-1120 and the adult child subsequently complies with the requirements for reinstatement, the adult child must submit the written confirmation of compliance, proof of written consent and an application for services as described in 137-055-1060. The written confirmation and application for services may be combined as one document.

(9) When the administrator has suspended or reinstated a support obligation pursuant to ORS 107.108, a party may request an administrative review of the action within 30 days after the date of the notice of suspension or reinstatement.

(a) The only issues which may be considered in the review are whether:

(A) The child meets the requirements of a child attending school;

(B) The written notice of the child's intent to attend or continue to attend school was sent to the parent ordered to pay support;

(C) The written consent was sent or proof of written consent was received.

(b) The burden of proof for the administrative review is on the requesting party to provide documentation supporting the allegation(s).

(10) When support has been suspended under ORS 107.108, the adult child may request to receive notice of future modifications and may request to be a party to the modification as outlined in 107.108 and OAR 137-055-3430. The adult child does not have any party status on the case until the request has been received by the administrator.

(11) In addition to the rights afforded under ORS 107.108, if the obligee claims good cause under OAR 137-055-1090, the child attending school may apply for services to enforce the existing support obligation on behalf of the child attending school only.

(a) The application will be handled in the same manner as outlined in OAR 137-055-1090(9)(a)-(c).

(b) If the child attending school applies for services, and services are provided under ORS 25.080, all arrears for that child will accrue to the child attending school as provided for in OAR 137-055-6021, until the child's 21st birthday or is otherwise emancipated and then will be file credited off the case.

(12) If a court orders payment from a higher education savings plan in lieu of support under ORS 107.108;

(a) The administrator will cease collection and billing actions on behalf of that child at age 18. If the support order is for a single or last remaining child the department will close the case unless there are arrears on the case.

(b) If payments are ordered from a higher education savings plan and the court has not provided for a modification of the support amount for any remaining children of the order, this is a substantial change of circumstances for purposes of modifying the support order.

(c) If payment from a higher education savings plan has been ordered, the administrator will not take action to subsequently modify the support order to include child attending school support provisions for that child.

(13) Except for support orders originally issued by a state other than Oregon and being enforced under the provisions of ORS 110.303 to 110.452, if the most recent order or modification for support cites 107.108 or otherwise provides for support of a "child attending school," the administrator will follow the provisions of 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020, 107.108 & 180.345

Stats. Implemented: ORS 25.020, 25.080, 107.108 & 416.407

Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; 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 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 10-2008, f. & cert. ef. 7-1-08

Rule Caption: Clarifies requirements for periodic review and modification of child support orders.

Adm. Order No.: DOJ 11-2008(Temp)

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 7-15-08 thru 9-30-08

Notice Publication Date:

Rules Amended: 137-055-3420

Subject: This rule is amended to clarify that a periodic review to ensure compliance with the child support guidelines will be initiated on a support order for a family receiving Temporary Assistance to Needy Families (TANF) when the order is at least 35 months old. The rule is also amended to provide that such a review may be initiated on a support order for a family who is not receiving TANF when the order is at least 35 months old.

Rules Coordinator: Vicki Tungate—(503) 986-6086

137-055-3420

Periodic Review and Modification of Child Support Order Amounts

(1) In addition to the definitions found in ORS 25.321, OAR 137-050-0320, 137-050-0410 and 137-050-0430, 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 and appropriate health care coverage or cash medical support is ordered against one or both parties.

(b) "Guidelines" means the formula, the scale, and related provisions in OARs 137-050-0320 through 137-050-0490.

(c) "Periodic Review" means proceedings initiated under ORS 25.287.

(d) "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.

(e) "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(ren).

(4) The administrator may initiate a periodic review if a written request for periodic review 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.

(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.

(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 state conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the state 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. The notice must advise the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party(ies) if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines and the need to order appropriate health care coverage

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or cash medical support, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support or ordering appropriate health care coverage or cash medical support;

(c) That the administrator will not conduct a review until 30 days have passed since the date of the notice unless documentation or written information is received from the parties before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(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.

(10) This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines and appropriate health care coverage or cash medical support is already ordered to be provided, or

(b) May be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(c) Must advise the parties that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has passed;

(d) Must include the request for hearing form for each of the parties if the administrator uses an administrative determination or motion form; and

(e) Must be sent to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108.

(11) 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.

(12) If a party wishes to object to the proposed determination or modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(13) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator will:

(a) Review the case to determine whether the monetary child support or medical child support provisions, should be redetermined and, if so, notify the parties of the new presumed support amount or medical child support provisions;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved; and

(d) Send a copy of the proposed determination and hearing request to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108

(14) If no request for hearing is filed within the 30 day period, the administrator will submit the determination or modification of the support order to the circuit court for entry in the court register.

(15) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, does not order appropriate health care coverage, or an amount towards cash medical support, the administrative law judge must enter a modified order that complies with the guidelines.

(16) An appeal under this rule will be as provided in ORS 25.287.

(17) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

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

Department of Oregon State Police, Office of State Fire Marshal Chapter 837

Rule Caption: Establishes qualification for consistent statewide administration and application of the fire code.

Adm. Order No.: OSFM 4-2008

Filed with Sec. of State: 7-2-2008

Certified to be Effective: 7-2-08

Notice Publication Date: 5-1-2008

Rules Adopted: 837-039-0120

Rules Amended: 837-039-0001, 837-039-0003, 837-039-0010, 837-039-0015, 837-039-0040, 837-039-0050, 837-039-0055, 837-039-0060, 837-039-0070, 837-039-0080, 837-039-0110

Subject: The adopted and amended rules (837-039-001, 837-039-0003, 837-039-0040, 837-039-0080 and 837-039-0120) establish statewide standards for certification and training requirements for fire officials responsible for administration and application of the fire code in Oregon.

The amended rules (837-039-0010, 837-039-0015, 837-039-0050, 837-039-0055, 837-039-0060, 837-039-0070 and 837-039-0110) correct grammatical changes in the rule. These changes do not alter the scope, application or meaning of the rule.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-039-0001

Scope and Application

(1) This Division improves fire protection services by:

(a) Eliminating duplication in the administration of state and local fire protection programs;

(b) Giving the regulated community reasonable notice of how governmental subdivisions must enforce fire regulations and provide fire prevention services; and

(c) Providing a procedure to assure that fire codes adopted and administered by local governmental subdivisions are consistent with the minimum standards established by the State Fire Marshal.

(2) This Division includes six program elements:

(a) The criteria and application procedures to be used by governmental subdivisions applying for exempt status under ORS 476.030(3);

(b) The evaluation process to be used by the State Fire Marshal to assure that the adoption and administration of local fire codes equal or exceed those adopted and administered by the Office of State Fire Marshal;

(c) A description of those programs which must not be delegated to local jurisdictions under the exempt jurisdiction program;

(d) A description of nonexempt jurisdictions' responsibilities under ORS 476.060 and the enforcement activities including imminent life or property threats, and inspection and enforcement of the state fire code.

(e) A description of the appeals process to be used for fire code inconsistency findings, denied applications for exempt status, or for terminations of exempt status.

(f) The certification and training requirements for plan reviews and conducting fire code enforcement related to a fire official's scope of practice.

(3) This Division does not provide for the creation of fully exempt jurisdictions in the State of Oregon.

NOTE: There has been some confusion in past years as to the scope of the exempt jurisdiction program. Although ORS 476.030(3) authorizes the State Fire Marshal to "fully" exempt qualifying local governmental subdivisions from the State's fire laws, the State has not done so. There are some programs which have statewide impact and are, therefore, more reasonably managed at the state level. See OAR 837-039-0050.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0003

Definitions

(1) "Administration" (or "administrative") means the inspection, enforcement and record-keeping systems used in the management of a fire prevention/investigation program.

(2) "Appeal" means the administrative process which is offered to an aggrieved party by the authority having jurisdiction which:

(a) Assures the aggrieved party is given the due process of law;

(b) Is in response to the aggrieved party having received an order from the authority having jurisdiction;

(c) Is requested by the aggrieved party; and

(d) Is consistent with the lawful authority of the authority having jurisdiction.

(3) "Assistant" means an Assistant to the State Fire Marshal under ORS 476.060, including, but not limited to, "all fire marshals in those governmental subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established."

(4) "Authority Having Jurisdiction" means a local governmental subdivision recognized by the State Fire Marshal under this Division including, but not limited to:

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(a) Municipal fire departments operated under home rule charter;
(b) Rural fire protection districts operating under ORS 478;
(c) Water supply districts operating under ORS 264; or
(d) Public fire protection agencies not described above, and which are subject to the laws of the State of Oregon.

(5) "Classroom" means an instructional environment the instructor believes is most conducive for the student to learn the material in a specific unit.

(6) "Company Inspector" means an individual who has met the job performance requirements to conduct basic fire code enforcement in one- and two-story Business Group B occupancies and Mercantile Group M occupancies with no high-piled or rack storage.

(7) "DPSST" means the Department of Public Safety Standards and Training.

(8) "DPSST's NFPA Fire Inspector I" means an individual who has been certified by DPSST for meeting the requisite knowledge and skills identified in the DPSST NFPA Fire Inspector I task book to conduct basic fire code enforcement and apply codes and standards.

(9) "DPSST's NFPA Fire Inspector II" means an individual who has been certified by DPSST for meeting the requisite knowledge and requisite skills identified in the DPSST NFPA Fire Inspector I and II task books to conduct moderately technically challenging fire code enforcement and interpret codes and standards.

(10) "DPSST's NFPA Fire Inspector III" means an individual who has been certified by DPSST for meeting the requisite knowledge and requisite skills identified in the DPSST NFPA Fire Inspector I, II, and III task books to conduct advanced technically challenging fire code enforcement and resolve complex code-related issues.

(11) "Delegated Appeals Process" means an administrative procedure established by an exempt authority which the State Fire Marshal has found to be the equivalent of a contested case proceeding established under ORS Chapter 183 and the accelerated appeals process established under 479.180.

(12) "Deputy State Fire Marshal" means an employee of the Office of State Fire Marshal as authorized in ORS 476.040.

(13) "Enforcement" means the investigation, inspection, citation, and/or prosecution of alleged violations of state and local fire protection laws, rules and regulations.

(14) "Exempt" means a local governmental subdivision which is partially exempt from statutes, rules and regulations administered by the State Fire Marshal as authorized in ORS 476.030(3) and as defined in the Division.

(15) "Fire Code" means all Oregon fire protection statutes, the administrative rules of the State Fire Marshal and local government regulations which are adopted in conformance with this Division.

(16) "Fire Code Official" means the fire chief or other designated authority charged with the administration and enforcement of the fire code, or duly authorized representative.

(17) "Fire Official" means any individual authorized to enforce the state or local fire code.

(18) "Local Appeals Process" means the administrative procedure adopted and operated by a local government subdivision under local ordinance or resolution.

(19) "Local Governmental Subdivision" means a city, county or rural fire protection district whose function includes regulation of building use and occupancy and the administration of fire safety laws, ordinances and regulations.

(20) "NFPA" means National Fire Protection Association.

(21) "Nonexempt Jurisdiction" means a local governmental subdivision which has not applied for and been granted exempt status by the State Fire Marshal under this Division.

(22) "Partially Exempt Jurisdiction" means a local governmental subdivision which has received authorization from the State Fire Marshal under this Division to administer specified fire prevention programs within its legally established political boundary.

(23) "Promulgate" means to lawfully develop and adopt an administrative rule, local ordinance, code or regulation authorized by law.

(24) "Requisite Knowledge" means the fundamental knowledge one must have in order to perform a specific task.

(25) "Requisite Skills" means the essential skills one must have in order to perform a specific task.

(26) "Review Board" means an advisory committee consisting of five Exempt Jurisdiction Fire Marshals appointed by the State Fire Marshal for a term of three years.

(27) "Scope of Practice" means an established list of competencies that are required to administer the Oregon fire code in an elected range of complexity.

(28) "Service Area" means the geographic area contained within the municipal city limits, corporate boundaries of the fire district or areas to which the Exempt Jurisdiction provides fire protection and prevention services under contract.

(29) "State Appeals Process" means an administrative contested case proceeding under ORS Chapter 183 and, if applicable, the accelerated appeals process established under ORS 479.180.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0010

Applications for Exempt Status

(1) Local governmental subdivisions seeking exempt status must submit a written request to the State Fire Marshal that describes in detail the scope of the proposed exemption.

(2) The request must include a detailed explanation of the fire prevention and investigation programs to be provided by the requesting jurisdiction. Such programs must include but are not limited to:

(a) Fire code enforcement.

(b) Fire cause determination.

(c) Juvenile firesetter intervention.

(d) Fire and life safety education.

NOTE: Submitting a business plan demonstrating measurable goals and objectives in each of the categories is the method of explaining the proposed programs preferred by the State Fire Marshal. However, other formats may be used if they adequately demonstrate what must be done and how it is accomplished.

(3) The request must include an explanation of the Delegated Appeals Process to be employed and how it generally conforms to ORS 476.113 and 476.115.

(4) The request must include an explanation of how the jurisdiction satisfies the qualifications specified in these rules.

(5) The request must include such documentation and supportive materials as may be necessary to support the exemption request, including a copy of any locally adopted fire code and intergovernmental agreements.

(6) The State Fire Marshal must distribute copies of the request(s) to each of the review board members, requesting an advisory by them within 60 days of receiving the material as to the sufficiency of the application. Such advisories, both individually and collectively, may not be binding on the State Fire Marshal but may be considered by the State Fire Marshal in deciding whether to grant the exemption.

(7) The State Fire Marshal must determine whether to grant the exemption and notify the applicant accordingly within 30 days of receipt of the board's written advisory.

(8) Once granted, exempt status may remain in effect:

(a) Unless terminated by the State Fire Marshal for cause pursuant to ORS 476.030(3) and OAR 837-039-0055; or

(b) Upon 90 days written termination notice by the exempt jurisdiction to the State Fire Marshal; or

(c) Unless there is an unsatisfactory biennial review by the State Fire Marshal of the exempt authority's program and administration.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3)

Hist.: FM 3-1978, f. & ef. 6-16-78; FM 5-1978, f. & ef. 9-29-78; FM 2-1988, f. & cert. ef. 2-17-88; FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 8-2006 f. & cert. ef. 5-22-06; OSFM 12-2006, f. & cert. ef. 6-29-06; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0015

Minimum Fire Code Requirements

(1) Under ORS 476.030 and 476.120, the State Fire Marshal is responsible for promulgating rules and regulations which establish minimum standards for the protection of life and property from the dangers of fire.

(2) To meet this responsibility and to promote uniformity, the State Fire Marshal must assure that locally adopted fire codes in both exempt and non-exempt jurisdictions are consistent with minimum state fire code standards. Therefore, in adopting a fire code, local governmental subdivisions must:

(a) Adopt by reference the fire code promulgated by the State Fire Marshal; or

(b) Adopt a code that is consistent with state fire protection statutes and, is equal to or more stringent than, the fire code promulgated by the State Fire Marshal.

(3) Nothing in this Division requires a local governmental subdivision to adopt a fire code.

(4) Nothing in this Division may prevent a local governmental subdivision from adopting a fire code which is more stringent than the State Fire Code, if such local fire code is otherwise lawful.

(5) When an authority having jurisdiction proposes a new local fire code, or proposes to amend an existing fire code, they must provide a draft copy of the proposed fire code or amendment to the State Fire Marshal for a pre-adoption evaluation at the earliest date possible prior to final adoption and a final copy within 30 days after adoption.

(6) The State Fire Marshal must evaluate the fire codes or amendments submitted under section (5) to assure conformity with state fire pro-

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tection statutes and the minimum standards established by the State Fire Marshal.

(7) When the State Fire Marshal determines that a fire code submitted under section (5) of this rule conforms with minimum state standards, the State Fire Marshal must issue a consistency finding at the earliest date possible.

(8) When the State Fire Marshal determines that a fire code or amendment submitted under section (5) of this rule does not meet minimum state standards, the State Fire Marshal must:

(a) Notify the authority having jurisdiction of the proposed finding; and

(b) Give the authority having jurisdiction a reasonable time to amend or delete such inconsistencies.

(9) When the State Fire Marshal issues a proposed inconsistency finding under section(8) of this rule, and the authority having jurisdiction disagrees with the proposed finding, the aggrieved party may within 20 days of receiving the inconsistency finding appeal and request a contested case hearing under ORS Chapter 183 and OAR 837-039-0055. Thereafter, the State Fire Marshal must process the appeal within a reasonable time.

(10) When an appeal is not filed within 20 days of notification, and the authority having jurisdiction has failed to delete or amend the inconsistent fire code provision identified by the State Fire Marshal, a final inconsistency finding must be issued.

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

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3) & 476.120

Hist.: FM 3-1978, f. & ef. 6-16-78; FM 2-1988, f. & cert. ef. 2-17-88; FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 8-2006 f. & cert. ef. 5-22-06; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0040

Exemption Criteria

(1) In order to qualify for partially exempt status, applicants must provide evidence that they effectively administer and enforce the fire code sections specified in their application.

(2) To the extent of the proposed exemption, an ability to effectively administer a fire code is demonstrated by meeting or exceeding the qualifications described in this section.

(3) The applicants must employ a number of fire prevention personnel they deem adequate to:

(a) Inspect regulated buildings on a frequency they deem necessary to provide a reasonable level of fire and life safety in the applicant's service area.

(b) Annually inspect;

(A) Hospitals (I-2) and for licensing or certification by the Health Division except for I-2 Nursing Homes; and

(B) Licensed Day Cares (I-4) and for licensing by the Employment Department; and

(C) Mental Hospitals (I-2), Jails (I-3), Prisons (I-3) and Reformatories (I-3) in the applicant's service area.

(c) Inspect licensed Boarding/Residential Schools (E), Group Homes and Residential Board/Care Facilities (SR) bi-annually or at the request of the Licensing Agency for a license renewal; and

(d) Initially inspect Ambulatory Health Care Facilities (I-2) and Clinic-outpatient (B) and then every three years. A self inspection program may be initiated in the two intervening years. The process for the self inspection must be explained in the Exempt Jurisdiction's business plan; and

(e) Inspect licensed Sheltered Workshops (various occupancies) every three years.

(f) Make necessary reinspections at appropriate intervals to assure compliance with correction orders issued in response to noted deficiencies in the applicant's service area; and

(g) Make necessary special inspections as warranted for unusual conditions, including but not limited to, response to complaints of special hazards and special events requiring supervision in the applicant's service area.

(h) Provide consultation upon request of the licensing agency for Adult Foster Care Homes, pursuant to ORS 476.030(6) in the applicant's service area.

(4) Fire code administration personnel must meet the competency requirements for their elected scope of practice as outlined in section 837-039-0120.

(5) Applicants must provide evidence that they assure coordination among all authorities responsible for structural fire safety and fire protection within the applicant's service area.

(6) Applicants must:

(a) Provide the services specified in this rule to all service areas.

(b) Have the ability to provide an administrative appeals process upon the request of any party who may receive a fire code compliance order issued by the applicant. Such delegated appeal process must generally conform to a contested case proceedings described under ORS Chapter 183 unless otherwise provided for by state law; or

(c) Establish or maintain a fire code appeals board generally performing the functions outlined in ORS 476.115. If such Appeals Board meets the criteria established in subsection (6)(c) of this rule, the Board may hear local and delegated appeals and rule on fire code or other issues such as alleged unnecessary hardship, inconsistent regulations, requests for alternate materials or methods, etc.

(7) When a fire code delegated appeals process or board has been established under section (6) of this rule, applicants must:

(a) Coordinate the interpretation of state fire laws with the State Fire Marshal to assure uniformity;

(b) Submit a list of hearing officers or board members, including their term of appointment, to the State Fire Marshal. An updated list must be submitted annually or upon any change; and

(c) Submit a written summary of the results of any fire code appeal to the State Fire Marshal within 30 days of issuance of a final order.

(8) To the extent of the proposed exemption, applicants must employ an adequate number of fire investigation personnel to investigate the origin, cause, and circumstances of each fire occurring in the applicant's service area. Applicants must substantiate that their investigators are reasonably qualified through:

(a) Being DPSST certified as a NFPA Fire Investigator; or

(b) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to DPSST certification; or

(c) Having documented professional competency, as determined by the exempt jurisdiction, equivalent to either subsection (a) or (b) of this section; or

(d) Having documented training and experience, as determined by the exempt jurisdiction, equivalent to the requirements of NFPA 1033, Professional Qualifications for Fire Investigator; or

(e) Certification of the fire prevention administration by the Commission on Fire Accreditation International (CFAI).

(9) To the extent of the proposed exemption, applicants must employ an adequate number of trained personnel, as determined by the applicant to provide effective fire prevention education for all schools, institutions, and similar occupancies in the applicant's service area.

(10) To the extent of the proposed exemption, applicants must maintain records of their fire code administration and delegated appeal activities or other related functions as follows:

(a) Fire prevention inspection records must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(b) Records of fire code appeals must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(c) Fire investigation records which document a loss of life must be maintained for a period of 75 years. Other investigation records must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(d) Records of public fire education efforts must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(e) Records not otherwise described in this section must be maintained in accordance with the requirements of the Records Retention Schedule of the Secretary of State Archives Division.

(11) In the event an exempt jurisdiction ceases for any reason to be exempt, all records described in this section must be maintained by the jurisdiction as per the Records Retention Schedule of the Secretary of State Archives Division.

(12) Applicants must forward to the State Fire Marshal a written annual report which:

(a) Clearly describes the fire prevention and investigation activities of the applicant;

(b) Is on a calendar year basis; and

(c) Is forwarded to the State Fire Marshal no later than July 1st of the following year.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3)

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0050

Programs Eligible for Delegation

(1) As indicated by statutory reference and title, the administration of the following functional areas must be retained in all cases by the State Fire Marshal:

(a) ORS 453.307 through 453.414, Community Information on Hazardous Substances;

(b) ORS 476.055, State Fire Marshal Fund;

(c) ORS 476.060, Local officers and Constables as Assistants to the State Fire Marshal;

(d) ORS 476.090, Record of Fires;

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(e) ORS 476.420, Standardization of Existing Fire Protection Equipment; Exemption;

(f) ORS 476.440, Sale of Nonstandard Equipment Prohibited;

(g) ORS 476.510 through 476.610, Protection of Life and Property from Fire in Case of Emergency (Emergency Conflagration Act);

(h) ORS 476.855, Discretionary Powers of the State Fire Marshal;

(i) ORS 476.900 through 476.925, Forest Fire Protection Equipment Acquisition;

(j) Except as otherwise provided in OAR 837, division 040, ORS 480.010 through 480.095, Explosives Generally;

(k) Except as otherwise provided in OAR chapter 837, division 040, ORS 480.200 through 480.280, Manufacture, Sale, Possession and Transfer of Explosives;

(l) Except as otherwise provided in OAR 837, division 012, ORS 480.130, Permits Required for Sale or Public Display of Fireworks; fee.

(m) Except as otherwise provided in OAR 837, division 012, ORS 480.150, Permits for Fireworks Sales or Displays; Rules; Security.

(n) Except as otherwise provided in OAR 837, division 012, ORS 480.156, Sales of Fireworks to Out-of-State Residents;

(o) ORS 480.350, Nonretail Facility License;

(p) ORS 480.355, Conditional Nonretail Facility License;

(q) ORS 480.375(2), Audits of Nonretail Facilities;

(r) ORS 480.432 through 480.440 LPG Licensing Program; and

(s) Those other statutory functions reserved exclusively to the State Fire Marshal.

(2) Although the administration of the functional areas listed in section (1) of this rule are reserved to the State Fire Marshal, nothing in this division prevents an authority having jurisdiction from enforcement of state statutes or the State Fire Code if such provisions are not covered in the Local Fire Code or are more stringent than the Local Fire Code.

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

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3)

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0055

Review and Appeals

(1) The State Fire Marshal may review all approvals issued under this division every two years and may terminate any approval for cause.

(2) When a termination is proposed under section (1) of this rule, the State Fire Marshal must give the affected jurisdiction written notice at least 30 days before a proposed termination becomes effective.

(3) An affected jurisdiction may appeal in writing any refusal of the State Fire Marshal to grant an approval or a proposed termination.

(4) Upon receipt of an appeal under section (3) of this rule, the State Fire Marshal must initiate an administrative appeals process. The process must conform to the contested case provisions of ORS Chapter 183.

(5) The results of the appeals process conducted under section (4) of this rule must be final and thereafter not appealable.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030(3)

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00, Renumbered from 837-039-0100; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0060

Nonexempt Jurisdictions

(1) Local government subdivisions who have not applied for and been granted exempt status by the State Fire Marshal operate fire code administration programs in conformance with this division.

(2) Under ORS 476.060, public fire marshals and fire chiefs are designated as Assistants to the State Fire Marshal and enforce the fire code in conformance with this division.

(3) There are two areas of nonexempt enforcement activities:

(a) Responses to imminent life or property threats; and

(b) Inspection and enforcement of the state fire code.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.060 & 476.070

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0070

Nonexempt Response to Imminent Life or Property Threats

(1) When an Assistant to the State Fire Marshal in a nonexempt jurisdiction encounters a situation which presents an imminent threat to life or property, the Assistant to the State Fire Marshal must:

(a) Take such measures as are reasonably necessary to stabilize the situation including, but not limited to closing the building or premises for use or occupancy under ORS 479.170 until such dangerous conditions are remedied; and

(b) Notify the Office of State Fire Marshal.

(2) Any enforcement action taken under this section by an Assistant to the State Fire Marshal must be considered an act of the State Fire Marshal.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.060 & 476.070

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0080

Inspections or Other Activities by Nonexempt Jurisdictions

(1) When an Assistant to the State Fire Marshal in a nonexempt jurisdiction administers a fire prevention program, the Assistant must do so in conformance with this section.

(2) The Assistant to the State Fire Marshal must have a written plan of their fire prevention program which includes and describes the following:

(a) Types of inspection activities;

(b) Frequency of inspections;

(c) Type of enforcement actions that may be taken; and

(d) Record keeping system.

(3) The Assistant to the State Fire Marshal must ensure personnel that are responsible for fire code administration meet the competency recognition requirements for their scope of practice as outlined in section 837-039-0120.

(4) Records must be maintained of all fire code inspections and re-inspections, investigations, appeal activities and any other related functions.

(5) When any lawful order of the Assistant to the State Fire Marshal is appealed, the State Fire Marshal must provide a contested case appeals process under OAR 837-039-0055, unless otherwise provided by law, as follows:

(a) The Assistant to the State Fire Marshal who took the enforcement action which was appealed must be available and prepared to participate in the appeals process;

(b) The State Fire Marshal must pursue and present the state through the appeals process; and

(c) The State Fire Marshal must determine what, if any, orders are to be issued and/or penalties are to be assessed.

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.070

Hist.: FM 5-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0110

Certification and Training Requirements for Plan Review

(1) These rules establish standards for certification of fire officials who review plans for input to a building official for new construction, alterations, and specifications from a Fire Code approved by the State Fire Marshal.

(2) All fire officials who review plans for new construction, alterations, and specifications must obtain an ICC Fire Inspector II and ICC Fire Plans Examiner certification or equivalent certification approved by the State Fire Marshal.

(3) Fire Officials who review plans only for fire department access and fire protection water supplies must successfully complete the State Fire Marshal's Fire and Life Safety Awareness courses on fire department access, water supply, and fire flow.

(4) All fire chiefs and every assistant to the state fire marshal meeting the definition under ORS 476.060 must complete the state fire marshal's Fire and Life Safety Awareness course module 1, Scope of Authority and Assembly Group A Occupancies.

(5) The State Fire Marshal must maintain a roster of ICC Fire Inspector II and ICC Fire Plans Examiner certified fire officials. A current list of ICC Fire Inspector II and ICC Fire Plans Examiners certified fire officials are provided to each building jurisdiction annually. Certifications must be maintained to continue participation in the plan review process.

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

Stat. Auth.: ORS 479.165

Stats. Implemented: ORS 479.165

Hist.: FM 3-1994, f. & cert. ef. 3-1-94; OSFM 9-2000, f. & cert. ef. 8-22-00; OSFM 8-2006 f. & cert. ef. 5-22-06; OSFM 4-2008, f. & cert. ef. 7-2-08

837-039-0120

Certification and Training Requirements for Conducting Fire Code Enforcement

(1) These rules establish statewide standards for certification and training requirements of fire officials responsible for administration of a Fire Code approved by the State Fire Marshal.

(a) Every person who performs fire code enforcement must possess an Oregon Fire and Life Safety Competency Recognition certificate for the scope of work being performed.

(A) Company Inspector certificate for fire officials performing fire code enforcement at this scope of practice. Fire officials have until January 1, 2009 to comply with the Oregon Fire and Life Safety Competency certificate provisions;

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(B) Fire and Life Safety Specialist I certificate for fire officials whose scope of practice is equivalent to DPSST's NFPA Fire Inspector I. Fire officials have until July 1, 2010 to comply with the Oregon Fire and Life Safety Competency certificate provisions;

(C) Fire and Life Safety Specialist II certificate for fire officials whose scope of practice is equivalent to DPSST's NFPA Fire Inspector II. Fire officials have until January 1, 2011 to comply with the Oregon Fire and Life Safety Competency certificate provisions;

(D) Fire Marshal certificate for fire officials whose scope of practice is equivalent to DPSST's, NFPA Fire Inspector III. Fire officials have until July 1, 2011 to comply with the Oregon Fire and Life Safety Competency certificate provisions.

(b) Every person who is transitioning between recognition levels or newly hired must receive the necessary on-the-job training experience and related technical instruction under the direct supervision of an appropriately recognized fire official.

(A) When the fire code official determines that a newly promoted or hired fire official responsible for fire code enforcement are fully qualified to perform the duties of a Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal, the newly hired fire official may work independently without direct supervision.

(B) The newly promoted or hired fire official responsible for fire code enforcement must meet the requirements of OAR 837-039-0120 (1)(a) within 12 months from date of hire.

(2) All persons who seek to perform the scope of practice of a Company Inspector must successfully complete the State Fire Marshal's course Company Inspection.

(3) All persons who seek to perform the scope of practice of a Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal must apply for the Oregon Fire and Life Safety Competency Recognition certificate as follows: Submit a Fire and Life Safety Competency Recognition application to the Office of State Fire Marshal. Include proof of certifications held and training completed.

(4)(a) Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, and Fire Marshal certificates expire three years from the issue date, unless renewed.

(b) The issue date is printed on all certificates.

(5)(a) Fire officials who fail to renew their Fire and Life Safety Specialist I, Fire and Life Safety Specialist II, or Fire Marshal certificates must not perform work within the respective scope of practice.

(b) A fire official who fails to renew a competency recognition certificate may reapply for certification. Include with application proof of certifications held and trainings completed.

Stat. Auth.: ORS 476.030 (1)
Stats. Implemented: ORS 476.030
Hist.: OSFM 4-2008, f. & cert. ef. 7-2-08

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Amends rules relating to course challenges, college transcripts and instructed hours on training records.

Adm. Order No.: DPSST 9-2008

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 7-15-08

Notice Publication Date: 6-1-2008

Rules Amended: 259-008-0025, 259-008-0045, 259-008-0060

Subject: Amend rule to eliminate opportunity for previously employed officers, corrections officers and parole and probation officers to challenge the Basic Course; amend rule to require a sealed official transcript from a college prior to entering college credit on an individual's record; and amend rule relating to instructed hours on officer training records.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0025

Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers shall satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion shall 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 shall be forwarded to the Department.

Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610, subsections (5), (13) and (14), and OAR 259-008-0005, subsections (7), (19), (23), and (24), during the last five (5) years or more, shall satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610(9) and (18) and 259-008-0005(14) and (32) for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant shall provide proof of successful completion of prior equivalent training.

(C) The applicant shall provide documentation of the course content with hour and subject breakdown.

(D) The applicant shall obtain a minimum passing score on all written examinations for the course.

(E) The applicant shall 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 shall only be given one opportunity to challenge a course.

(g) Previously employed police officers, corrections officers and parole and probation officers who are required to attend the Basic Course may not challenge the Basic Course.

(h) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610(5), (13) and (14), and OAR 259-008-0005(7), (19), (23) and (24) over two and one-half (2-1/2) but less than five (5) years shall 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 shall begin training at an academy operated by the Department within 90 days of their initial date of employment. 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) Training on the law, theory, policies and practices related to vehicle pursuit driving and vehicle pursuit training exercises shall be included in the basic course for police officers.

(A) This requirement is subject to the availability of appropriate facilities and funding.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2 1/2) and five (5) years, shall satisfactorily complete the Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course shall also complete the Board's field training program

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under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary. See 259-008-0025(1)(b).

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position shall satisfactorily complete the prescribed Supervision Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred from within a department, or is appointed from an outside department, without having completed a prescribed Supervision Course, within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete the prescribed Middle Management Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred to a middle management position within a department, or employed from outside a department and appointed to a middle manager position without having completed a prescribed middle management course within the preceding five (5) years.

(5) Specialized Courses:

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. The staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, shall be trained on how to investigate and report cases of missing children.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs shall be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08

259-008-0045

College Education Credits

(1) Credit for preservice or inservice college education will not be accepted in lieu of the Basic Course described in OAR 259-008-0025.

(2) College credits must be combined with experience and training in determining eligibility for Intermediate, Advanced, Supervisory, Management, and Executive Certification.

(3) College credits or degrees used for certification must have been earned from the following:

(a) A degree-granting community college, college or university accredited by a recognized national or regional accrediting body; or

(b) A community college, college or university whose coursework or degree has been accepted for credit by a degree granting community college, college or university accredited by a recognized national or regional accrediting body.

(c) A degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.

(d) For purposes of this rule, a recognized national or regional accrediting body is one recognized by the U.S. Department of Education, or the Council on Higher Education Accreditation (CHEA), or its predecessor.

(4) Any college credits obtained in a foreign country, which are claimed to be comparable to credits or a degree granted by a licensing body in the United States or US Territories must be evaluated by a credentialing

agency that is a member of the National Association of Credential Evaluation Services (NACES). The credentialing agency must send an evaluation to the Department for approval, at the applicant's expense, before any educational credit is accepted as equivalent.

(5) Certification Credit. The Department must receive sealed official transcripts from a college prior to entering college credit on an applicant's official record. Evaluation of these credits is subject to the conditions prescribed in sections (3) and (4) of this rule and OAR 259-008-0060.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0025, PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0051, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 5-1999, f. & cert. ef. 7-29-99; BPSST 4-2001, f. & cert. ef. 8-22-01; DPSST 4-2006, f. & cert. ef. 2-28-06; DPSST 9-2008, f. & cert. ef. 7-15-08

259-008-0060

Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and shall be acquired by all police officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers shall be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers shall meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers shall subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers shall subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T).

(7) Application for certification must be submitted on Form F7, with all applicable sections of the form completed. The form shall be signed by the applicant. In order to insure that the applicant does or does not meet the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative shall sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision shall be specified in writing and shall accompany the Application for Certification (Form F7).

(8) When a department head is the applicant, the above recommendation shall be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate, shall have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule shall equal one (1) education credit

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule shall equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)

(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved.

(b) The Department may award training points for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records shall include the subject, instructor, classroom hours, date, sponsor, and location.

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(c) Training completed in other states, military training, and other specialized training, if properly documented may be accepted, subject to staff evaluation and approval. These records shall include the subject, date, and classroom hours, and shall be certified true copies of the original.

(d) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or it's designated staff may award training points for correspondence courses.

(e) College credits earned may be counted for either training points or education credits, whichever is to the advantage of the applicant.

(f) College credit awarded based on training completed may be applied toward either training points or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the total number of training hours for which college credit was awarded.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level(s).

(C) Notwithstanding subsection (f) and (g) above, no credit can be applied toward both an education credit and training point when originating from the same training event.

(11) Experience/Employment:

(a) Experience acquired as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, casual, seasonal, or temporary employment shall not qualify as experience toward certification. Experience as a certified part-time parole and probation officer, as defined under OAR 259-008-0005(22) and (23) and 259-008-0066, shall count on a pro-rated basis.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants shall have completed a period of service of not less than nine (9) months with one or more law enforcement units, or public or private safety agencies in a certifiable position, in the field in which certification is being requested.

(b) Applicants shall have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department.

(c) Applicants shall have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants shall possess a Basic Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants shall possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(15) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants shall possess or be eligible to possess the Advanced Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department approved supervisory level training within five (5) years prior to application for the Supervisory Certificate.

(d) Applicants shall be presently employed in, or have satisfactorily performed the duties associated with the position of a first level supervisor, as defined in ORS 181.610 and OAR 259-008-0005(16), as attested to by the applicant's department head during the time such duties were performed, for a period of one (1) year. The required experience shall have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(16) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants shall possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department approved management level training within five (5) years prior to application for the Management Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in ORS 181.610 and OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(17) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants shall possess or be eligible to possess the Management Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed 100 hours of Department approved executive level training within five (5) years prior to application for the Executive Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer shall meet the following requirements for the award of multi-discipline certification:

(a) Basic certification: A person who is certified in one discipline may apply for multi-discipline certification, if employed in or transferred to another discipline within the same law enforcement unit. The applicant shall demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification, and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD discipline since it only exists at the basic certification level.

(c) Retention of Multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

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(A) For the EMD certificate; a minimum of four (4) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(B) For the Telecommunicator certification, a minimum of twelve (12) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(C) For all other disciplines, a minimum of twenty (20) hours of training, specific to each discipline in which certification is held, must be reported annually on a Form F-15M.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) Failure to comply with subsection (c) of this rule shall result in the recall of the multi-discipline certification by the Board.

(f) Upon documentation of compliance with subsection (c) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

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

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08

Rule Caption: Amend NFPA 1005 and 1041 Standards for Professional Qualifications.

Adm. Order No.: DPSST 10-2008

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 7-15-08

Notice Publication Date: 6-1-2008

Rules Amended: 259-009-0005, 259-009-0062

Subject: Amend NFPA 1005 Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters; amends NFPA 1041 Standard for Professional Qualifications for Fire Service Instructor; and defines NFPA Instructor I, Instructor II and Instructor III. Amends rule relating to false information provided on a departmental form; and amends rule relating to disclosure of confidential information.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-009-0005

Definitions

(1) "Authority having jurisdiction" shall mean 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) "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.

(5) "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.

(6) "Company Officer" means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(7) "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.

(8) "Department" means the Department of Public Safety Standards and Training.

(9) "Director" means the Director of the Department of Public Safety Standards and Training.

(10) "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.

(11) "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.

(12) "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.

(13) "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.

(14) "Fire Ground Leader" means a Fire Service Professional who is qualified to lead emergency scene operations."

(15) "Fire Inspector" means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "NFPA Airport Firefighter" means a member of a Fire Service Agency who has met job performance requirements of NFPA Standard 1003.

(21) "NFPA Driver-Operator" means a member of a fire service agency licensed to operate a fire service agency vehicle/apparatus in accordance with the job performance requirements of NFPA 1002 and who have met the Entry Level Fire Fighter requirements. Fire service agency vehicle/apparatus operators are required to be certified at NFPA 1001 fire fighter I standard prior to driver operator duties. Additional requirements are involved for those driver operators of apparatus equipped with an attack or fire pump, aerial devices, a tiller, aircraft firefighting and rescue vehicles, wildland fire apparatus, and mobile water supply apparatus (tanker/tender).

(22) "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.

(23) "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.

(24) "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.

(25) "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.

(26) "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.

(27) "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)

(28) "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)

(29) "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)

(30) "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)

(31) 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

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learning is maximized; and meet the record-keeping requirements of authority having jurisdiction.

(32) 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.

(33) 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.

(34) "NFPA Marine Land-Based Fire Fighter" means a member of a fire service agency who meets the job performance requirements of NFPA 1005.

(35) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(36) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(37) "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.

(38) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(39) "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.

(40) "Track" means a field of study required for certification.

(41) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: DPSST 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

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 if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2002 Edition, entitled "Fire Fighter Professional Qualifications";

(A) "Authority having jurisdiction" shall mean 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) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for Fire Fighter I and Fire Fighter II, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard 1002, 2003 Edition, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) 5.1 General. The requirements of NFPA 1001 Fire Fighter I, as specified by the Department and the job performance requirements defined in Sections 5.1 and 5.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(G) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program".

(H) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for: Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(I) An individual who completes the requirements of Chapter 4 and meets the requirements of Entry Level Fire Fighter (NFPA 1403) may be certified as a Driver.

(c) The provisions of the NFPA Standards 1003, 2005 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications,"

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled "Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(B) Delete section 2.2 (Note: This references NFPA 1500);

(C) Delete sections of 2.4 (Note: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.)

(D) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(E) All applicants for certification must complete a Department approved Task Book for: Marine Fire Fighting for Land Based Fire Fighters and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(F) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009, will need to show completion of the approved task book.

(e) The provisions of the NFPA Standard No. 1031, Edition of 1998, entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) November 1, 2000, all new certifications will be based on NFPA 1031.

(ii) November 1, 2000, through January 1, 2005, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Inspector I.

(iii) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer II will be certified as an NFPA Fire Inspector II.

(iv) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer III will be certified as an NFPA Fire Inspector III.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

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(B) All applicants for certification as an NFPA Fire Inspector I shall:
(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.

(C) All applicants for certification as an NFPA Fire Inspector II shall:
(i) Hold a certification as a Fire Inspector I; and
(ii) Successfully complete a Department approved Task Book.
(D) All applicants for certification as an NFPA Fire Inspector III shall:
(i) Hold a certification as a Fire Inspector II; and
(ii) Successfully complete a Department approved Task Book.

(E) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(f) The provisions of the NFPA Standard No. 1033, Edition of 1998, entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) Beginning November 1, 2000, all new certifications will be based on NFPA 1033.

(ii) November 1, 2000, anyone certified as an Oregon Fire Investigator II will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator II. No new Oregon Fire Investigator II certificates will be issued after January 1, 2005.

(iii) November 1, 2000, anyone certified as an Oregon Fire Investigator III will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator III. No new Oregon Fire Investigator III certificates will be issued after January 1, 2005.

(iv) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as a Fire Investigator shall successfully complete a Department approved Task Book prior to passing a written certification exam administered by the Department. Exception: Anyone holding a valid IAAI Fire Investigator Certification is exempt from taking the Department's Fire Investigator written exam.

(C) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years fire investigation experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(g) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II," Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

(II) 1-4.11 Change the title of "Fire Screener" to "Fire Screening" and the definition to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

(III) 1-4.14 Include "insurance" in list of agencies.

(IV) 1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services."

(V) 1-4.16 Change "person" to "youth" and change age from 21 to 18.

(VI) 1-4.17 Add "using state-approved prepared forms and guidelines."

(VII) 1-4.22 Add "...or by authority having jurisdiction."

(VIII) 1-4.24 Add "...or as defined by the authority having jurisdiction."

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(h) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for Fire Service Instructor I and II.

(i) This requirement is effective for any application for certification after January 4, 2002.

(i) The provisions of the NFPA Standard 1021, 2003 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.2 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Written Communication, Advanced Speech, Technical Writing/Business Writing, Math, and Physics or Chemistry.

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for; NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.2 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.2 through 6.7 of the Standard.

(i) Amend section 6.1 to allow individuals certified as NFPA 1033 Fire Investigator, NFPA 1035 Public Fire and Life Safety Educator, or NFPA 1031 Fire Inspector III to apply for certification without attaining NFPA 1001 Fire Fighter II.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.2 through 7.7 of the Standard.

(i) 5-1.2 General Requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula — Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(j) Hazardous Materials Responder (DPSST-P-12 1/96).

(k) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader shall first be certified as an NFPA Fire Fighter II.

(C) An applicant would need to document training in seven areas:

(i) Building Construction: Non-Combustible;

(ii) Building Construction: Combustible;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Managing Water Supplies Operations;

(v) MCTO — Preparation or PICO;

(vi) MCTO — Decision Making;

(vii) MCTO — Tactics or STICO;

(viii) Incident Command System;

(vix) Fire Investigation.

(D) A task book shall be completed before certification is awarded.

(I) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST Wildland Interface Certification Guide, Revised September, 2003).

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(m) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(A) Historical Recognition:

(i) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application 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.

(iii) All applications received after October 1, 2004, will need to show completion of the approved task book.

(n) Certification guide for Wildland Fire Investigator (August, 2005).

(o) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire service agency.

(B) Historical Recognition:

(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application to use historical recognition shall be submitted to DPSST on or before March 31, 2003.

(C) Instructors:

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the six specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off the task book.

(iii) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(p) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(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

Rule Caption: Amend Rule Relating to 15-Hour Firearms Course for Armed Private Security Professional.

Adm. Order No.: DPSST 11-2008

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 7-15-08

Notice Publication Date: 6-1-2008

Rules Amended: 259-060-0070

Subject: Amends current rule relating to a 15-hour firearms course. Revises definition to Basic Firearms Course.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-060-0070

15-Hour Firearms Course and Marksmanship Qualifications

(1) The training requirements for certification as an armed private security professional are:

(a) Satisfactory completion of the training requirements set forth in OAR 259-060-0060;

(b) An additional course of instruction based upon a curriculum approved by the Board or its designated staff;

(c) Successful completion of an additional written examination, administered in accordance with OAR 259-060-0065, covering firearms instructional materials;

(d) A minimum marksmanship qualification score of 100 percent on a firearms qualification course and target approved by the Board or its designated staff.

(2) The basic firearms instructional course and marksmanship qualification must be administered by a certified private security or public safety firearms instructor (OAR 259-060-0135(3)). Only the administering instructor may complete the Form PS-6.

(3) The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements.

(4) The Department or its designated staff may cause inspections of training methods or the instructors to be made pursuant to ORS 181.878(4)(b), 181.878(6), and OAR 259-060-0135(6).

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

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878 & 181.883

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; 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 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 11-2008, f. & cert. ef. 7-15-08

Rule Caption: Amend rules related to criminal disqualifying misconduct, false information, credit card payments and confidential information.

Adm. Order No.: DPSST 12-2008

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 7-15-08

Notice Publication Date: 6-1-2008

Rules Amended: 259-061-0040, 259-061-0090, 259-061-0230

Rules Repealed: 259-061-0040(T), 259-061-0090(T), 259-061-0230(T)

Subject: Amends rule relating to minimum standards for licensure and further defines criminal disqualifying misconduct; allows payments to be made by credit card; amends rule relating to false information provided on a departmental form; and amends rule relating to disclosure of confidential information.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-061-0040

Minimum Standards for Licensure

(1) An applicant for licensure as a private investigator must satisfy all license qualifications pursuant to ORS 703.415 and ORS 703.425.

(2) Moral Fitness (Professional Fitness). All private investigators must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, interview, statement or other documentation for securing licensure, eligibility for licensure, or in the course of conducting business under one's license.

(D) Conduct that is prejudicial to the administration of justice;

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(E) Conduct that adversely reflects on his or her fitness to perform as a private investigator. Examples include, but are not limited to: Intoxication while on duty, untruthfulness, failure to fulfill contractual commitments to clients, failure to provide supporting proof of investigative activities and/or services conducted for their clients, fraudulent billing practices, or a history of personal habits off the job which makes the private investigator both inefficient and otherwise unfit to render effective service because of a loss of confidence in the private investigator's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a private investigator lacks good moral fitness, a rebuttable presumption will be raised that the private investigator does not possess the requisite moral fitness to be a private investigator. The burden will be upon the private investigator to prove good moral fitness.

(3) The Department will conduct a review of any application on which disclosures have been made to determine if a license should be issued pursuant to ORS 703.415(3), 703.450, 703.465.

(4) Criminal History. An applicant for licensure must not:

(a) Have been convicted of a person felony, as defined in the rules of the Oregon Criminal Justice Commission: ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (OAR 213-018-0070(1) and (2)); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.160(3) Felony Domestic Assault; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.205 Criminal Mistreatment I; ORS 163.207 Female Genital Mutilation; ORS 163.208 Assaulting a Public Safety Officer; ORS 163.213 Use of Stun Gun, Tear Gas, Mace I; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 153.275 Coercion as defined in Crime Category 7 (OAR 213-018-0035(1)); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.425 Sexual Abuse I; ORS 163.465 Felony Public Indecency; ORS 163.479 Unlawful Contact with a Child; ORS 163.452 Custodial Sexual Misconduct in the First Degree; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.537 Buying/Selling Custody of a Minor; ORS 163.547 Child Neglect I; ORS 163.670 Using Child in Display of Sexual Conduct; ORS 163.684 Encouraging Child Sex Abuse I; ORS 163.686 Encouraging Child Sex Abuse II; ORS 163.688, Possession of Material Depicting Sexually Explicit Conduct of Child I; ORS 163.689, Possession of Material Depicting Sexually Explicit Conduct of Child II; ORS 163.732 Stalking; ORS 163.750 Violation of Court Stalking Order; ORS 164.075 Theft by Extortion as defined in Crime Category 7 (OAR 213-018-0075(1)); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (OAR 213-018-0025(1) and (2)); ORS 164.325 Arson I; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.877(3) Tree Spiking (Injury); ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS 166.275 Inmate in Possession of Weapon; ORS 1266.385(3), Felony Possession of a Hoax Destructive Device; ORS 166.643 Unlawful Possession of Soft Body Armor as defined in Crime Category 6 (OAR 213-018-0090(1)); ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 468.951 Environmental Endangerment; ORS 475.984 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and 0008); ORS 475.986 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8 and 9 (OAR 213-019-0007, 213-019-0008 and 213-019-00011); ORS 609.990(3)(b) Maintaining Dangerous Dog; ORS 811.705 Hit and Run Vehicle (Injury); ORS 813.010, Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 830.475(2) Hit and Run Boat; attempts or solicitations to commit any Class A or Class B person felonies, or an equivalent crime with similar elements in another jurisdiction.

(b) Within the 10-year period prior to applying for, or during, licensure, must not:

(A) Have been incarcerated, placed on probation or paroled as the result of conviction of any felony, other than those described in subsection (a) of this section in this, or any other, jurisdiction.

(B) Have been convicted of violating ORS 163.435 (Contributing to the Sexual Delinquency of a Minor), 163.672 (1993 Edition) (Possession of Depiction of Sexual Conduct of a Child), 163.673 (1993 Edition) (Dealing in the Depiction of Sexual Conduct of a Child), 167.007 (Prostitution), 167.062 (Sodomasochistic Abuse or Sexual Conduct in a Live Show), 167.065 (Furnishing Obscene Material), 167.070 (Sending Obscene Material to Minors), 167.075 (Exhibiting An Obscene Performance to a Minor), 167.080 (Displaying Obscene Material to Minors), 167.087 (Disseminating Obscene Material) or an equivalent crime with similar elements in another jurisdiction.

(C) Have been convicted of a person misdemeanor, as defined in the rules of the Oregon Criminal Justice Commission: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.187 Strangulation; ORS

163.190 Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.212 Use of Stun Gun, Tear Gas, Mace II; ORS 163.415 Sexual Abuse III; ORS 163.454 Custodial Sexual Misconduct in the Second Degree; ORS 163.465, Public Indecency; ORS 163.467 Private Indecency; ORS 163.476 Unlawfully Being in a Location Where Children Regularly Congregate; ORS 163.545 Child Neglect II; ORS 163.575 Endanger Welfare of a Minor; ORS 163.687 Encouraging Child Sex Abuse III; ORS 163.700 Invasion of Personal Privacy; ORS 163.709 Unlawfully Directing a Laser Pointer; ORS 163.732(1) Stalking; ORS 163.750(1) Violating Court's Stalking Order; ORS 165.572 Interfering with Making a Police Report; ORS 166.065(4) Harassment/Offensive Sexual Contact; ORS 166.155 Intimidation II; ORS 166.385(2) Misdemeanor Possession of a Hoax Destructive Device; ORS 475.986(1)(d) Unlawful Administration of a Controlled Substance; ORS 609.990(3)(a) Maintaining Dangerous Dog; ORS 813.010, Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); attempts or solicitations to commit any Class C person felonies, or an equivalent crime with similar elements in another jurisdiction.

(D) Have been convicted of the following misdemeanors: ORS 162.075 (False Swearing), 162.085 (Unsworn Falsification), 162.145 (Escape III), 162.247 (Interfering with a Peace Officer), 162.295 (Tampering with Physical Evidence), 162.335 (Compounding a Felony), 162.365 (Criminal Impersonation), 162.369 (Possession of False Law Enforcement Identification Card), 162.385 (Giving False Information to Police Officer), 164.045 (Theft II), 164.125(5)(b) (Theft of Services), 164.140 (Criminal Possession of Rented or Leased Personal Property), 164.235 (Possession of Burglar's Tools), 164.255 (Criminal Trespass I), 164.265 (Criminal Trespass while in Possession of a Firearm), 164.335 (Reckless Burning), 164.354 (Criminal Mischief II), 164.369 (Interfering With Police Animal), 164.377(4) (Computer Crime), 165.007 (Forgery II), 165.055(4)(a) (Fraudulent Use of a Credit Card), 165.065 (Negotiating a Bad Check), 166.115 (Interfering With Public Transportation), 166.250 (Unlawful Possession of Firearms), 166.350 (Unlawful Possession of Armor Piercing Ammunition), 166.425 (Unlawful Purchase of Firearm), 167.262 (Adult Using Minor in Commission of Controlled Substance Offense), 471.410 (Providing Liquor to Person under 21 or Intoxicated Person), or an equivalent crime with similar elements in another jurisdiction.

(c) Have been convicted, within the 10-year period prior to applying for, or during, certification or licensure, of a "misdemeanor crime of domestic violence," in this or any jurisdiction. A "misdemeanor crime of domestic violence" means a misdemeanor under the law of any jurisdiction involving the use or attempted use of physical force, or threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting with or has co-habited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or a guardian of the victim.

(d) Have been convicted of a misdemeanor or felony involving the unlawful use, possession, delivery or manufacturing of a controlled substance, or a misdemeanor or felony of similar elements, in this or any jurisdiction: 475.525 (Sale of Drug Paraphernalia), 475.991 (Unlawful Delivery of Imitation Controlled Substance), 475.992 (Prohibited Acts, Manufacturing and Delivering), 475.995 (Distribution to Minors), 475.999 (Manufacturing or Delivering of a Controlled Substance within 1,000 feet of School), or an equivalent crime with similar elements in another jurisdiction.

(e) Have been required to register or be registered as a sex offender under ORS 181.595, 181.596 or 181.597.

(f) Have been convicted, within the seven-year period prior to applying for, or during, certification or licensure, of the following misdemeanors, or a misdemeanor of similar elements, in this or any jurisdiction: 164.043 (Theft III), 164.125(5)(a) (Theft of Services), 162.375 (Initiating a False Report), 166.240 (Carrying of Concealed Weapons), or an equivalent crime with similar elements in another jurisdiction.

(5) Failure to disclose a criminal conviction, on an application for licensure, of any Misdemeanor or Felony crime is grounds for denial, suspension or revocation of a license, and may include criminal or civil penalties.

(a) Department Staff Review: The Department or its designated staff shall review the disclosure and shall request further information or conduct its own investigation of the matter. If there is grounds for a suspension, revocation or denial based on the statutory and administrative rule requirements, the department shall notify the applicant or license holder in writing.

(b) Initiation of Proceedings: The Department's designated staff shall determine if the reason for suspension, revocation or denial and supporting factual data meet the statutory and administrative rule requirements and so advise the applicant or license holder.

(c) Contested Case Notice: The Department or its designated staff shall prepare a "Contested Case Notice" in accordance with OAR 137-003-

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0001 of the Attorney General's Model Rules of Procedure. The Department or its designated staff must serve a copy of the "Notice" on the person whose application or licensure is being affected.

(d) Emergency Suspension Order: Notwithstanding subsection (e), the Department may immediately suspend a person upon a report that a person has been arrested for, or charged with, any crime listed in OAR 259-061-0040(4). The report may be received in any form and from any source.

(e) An Emergency Suspension Order must be in writing. The order may be issued without prior notice to the individual and without a prior opportunity for a contested case hearing. An Emergency Suspension Order must:

(A) Generally describe the acts of the person and any circumstances that would be grounds for an Emergency Suspension Order under this rule; and

(B) Identify the person at the Department whom the individual may contact and who is authorized to make recommendations regarding issuance of the order.

(f) When the Department issues an Emergency Suspension Order, it shall be served on the individual either personally or by registered or certified mail and must contain the following information:

(A) The effective date of the Emergency Suspension Order;

(B) A statement of findings detailing the specific acts or omissions of the person that violate applicable laws or rules and which serve as the grounds for revocation or suspension;

(C) A reference to the sections of the statutes and rules involved;

(D) A statement indicating the individual has the right to request a hearing to contest the Emergency Suspension Order;

(E) A statement indicating the individual will have waived their right to a hearing regarding the Emergency Suspension Order if the request for a hearing is not received by the Department within 20 calendar days of the date of notice of the Emergency Suspension Order; and

(F) A statement indicating a hearing will be held as soon as is prudent and practicable if a timely request for a hearing is received.

(g) If the individual submits a timely request for a hearing, the Department will hold a hearing on the Emergency Suspension Order as soon as is prudent and practicable.

(A) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the license or certificate.

(B) The sole purpose of the hearing will be to determine whether the individual was charged with or arrested for a crime listed in OAR 259-061-0040(4). Upon a showing that an individual was not charged with or arrested for a crime in OAR 259-061-0040(4), the suspension of the individual's certificate or license will be immediately lifted; otherwise, the suspension will remain in effect until final disposition of the charges or arrest.

(h) Response Time:

(A) Revocation or Denial: If the Department is seeking revocation or denial of a license or certificate, a party who has been served with the "Contested Case Notice" must submit a written request for a hearing to the Department within 60 calendar days from the date of mailing or personal service of the notice.

(B) Suspension: If the Department is seeking suspension of a license or certificate, a party who has been served with an Emergency Suspension Order must submit a written request for a hearing to the Department within 20 calendar days from the date of mailing or personal service of the notice. The Department may extend the time allowed for submission of the written request for a hearing for up to 30 calendar days upon request.

(i) Default Order: If a timely request for a hearing is not received by the Department, the Contested Case Notice or Emergency Suspension Order will become a final order revoking, suspending or denying certification pursuant to OAR 137-003-0075(5).

(j) When the Department revokes a certification or denies an applicant's license, an individual is ineligible to reapply for future certification or licensure for a period of three (3) years from the date of final Department action or order. Any applicant reapplying for licensure must reapply in accordance with the provisions of ORS 703.401-703.490

(k) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Hearings Officer Panel in accordance with OAR 137-003-0075(5).

(6) A denial or revocation of a license pursuant to ORS 703.450(4) will cause the denial, suspension, or revocation of all licenses administered by the Department.

Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480

Stats. Implemented: ORS 703.401 - 703.995

Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 7-2008(Temp), f. & cert. ef. 5-15-08 thru 10-16-08; DPSST 12-2008, f. & cert. ef. 7-15-08

259-061-0090

Review of Application Materials

The Department will review all application materials for completeness and may:

(1) Upon written notice from the Department to the applicant, administratively terminate the application for any of the following reasons:

(a) The Department has reason to believe that a person with the applicant's name and birth date has committed an act that constitutes grounds for denial of a license under ORS 703.465. The termination of an application due to a criminal conviction disqualification is subject to the contested case hearing procedures set forth in ORS 703.470

(b) The application or any required documentation is incomplete or the Department has been unable to verify application information to its satisfaction due to non-response or non-compliance of the applicant.

(c) Applicant has violated any administrative rule or condition imposed by ORS or OAR concerning the licensure and conduct of a Private Investigator or applicant as such.

(d) The fingerprint cards of applicant have been rejected and returned by the Oregon State Police or Federal Bureau of Investigations.

(2) Applicants who provide false information to the Department, or who omit information pertaining to OAR 259-061-0040 on an application or required departmental form, shall be disqualified from reapplying for a period of three (3) years.

(3) The Department or its designated staff may administratively terminate the application process if the Department is unable to complete the certification process due to non-response or non-compliance of the applicant after exhausting the following efforts:

(a) A letter shall be mailed by the Department to the applicant, and the last known mailing address of the applicant, identifying the deficiencies in the application process.

(b) The applicant shall have 21 calendar days from the date of mailing to notify the Department that the deficiencies are corrected. The Department may, in its discretion, elect to extend the time for compliance upon good cause shown by the applicant or its manager.

(c) If the Department is unable to determine a current address for the applicant, or if the applicant does not respond and correct the deficiencies within 21 calendar days, or such additional time authorized by the Department, the Department shall list the applicant's status as "administratively terminated." The Department shall notify the applicant at his or her last known address, that the Department has administratively terminated the application process.

(4) Once the application process has been administratively terminated, the applicant can reapply at any time by submitting a new completed application and appropriate fees.

Note: Applicants who have been denied, revoked or suspended for any reason may

not reapply for licensure for a period of 3 years from the date of final action.

Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480

Stats. Implemented: ORS 703.401 - 703.995

Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 8-2008(Temp), f. & cert. ef. 5-15-08 thru 10-16-08; DPSST 12-2008, f. & cert. ef. 7-15-08

259-061-0230

Compliance

(1) A preliminary administrative review of the complaint will be made by Department staff to assure there is sufficient information to proceed. Staff will conduct a fact finding preliminary investigation (e.g. data searches and other inquiries).

(2) If sufficient information is determined to support the allegation(s) of the complaint, staff will:

(a) Open and conduct an investigation. Gather relevant information and, in doing so, may submit questions to the respondent and require written answers and copies of related documents. The respondent shall comply within twenty (20) days after the request is mailed, unless the Department authorizes an extension.

(b) Notify Respondent of intended action as authorized by ORS 703.465 and 703.995.

(c) Seek Resolution by Stipulation. Department staff is authorized to seek resolution by stipulation, subject to acceptance and approval by the Director, if:

(A) The matter is resolved before entry of any final order;

(B) The agreement has been entered into freely and voluntarily by respondent;

(C) The respondent corrects or proceeds to correct all deficiencies itemized by Department under the terms of the agreement; and

(D) Any penalty amount agreed to is paid and received with the stipulation.

(E) A stipulation shall not be accepted if the violation is for failure to obtain a required license, and such is not obtained as part of the resolution.

(3) If the Department finds that an allegation is false, all information about the alleged violation and the investigation will be considered confidential and not subject to disclosure pursuant to ORS 192.410 to 192.505.

Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480

Stats. Implemented: ORS 703.401 - 703.995

Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 7-2008(Temp), f. & cert. ef. 5-15-08 thru 10-16-08; DPSST 12-2008, f. & cert. ef. 7-15-08

ADMINISTRATIVE RULES

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

Rule Caption: Proof of Residency, Limited Vision Driver Permits, Hardship Permits, Parking Identification Cards — Miscellaneous Changes.

Adm. Order No.: DMV 12-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Amended: 735-016-0070, 735-062-0320, 735-064-0020, 735-080-0060, 735-080-0070

Subject: DMV has included the new statutory term “parking identification card” to refer to the identification card DMV issues without a photograph, and has made the card valid for eight years, rather than four years.

Other amendments include (1) clarification that while Oregon Income Tax Returns may be used as proof of residency or domicile, an Oregon Tax Return for a Nonresident (Form 40N) cannot; (2) confirmation that a person whose driving privileges are suspended because he or she committed a fraudulent or unlawful act in applying for or using a driver license, driver permit or identification card may not be issued a hardship permit; and (3) updates to statutory references and other changes for clarity.

Rules Coordinator: Lauri Kunze — (503) 986-3171

735-016-0070

Proof of Residency or Domicile

(1) DMV will accept the following as proof of residency or domicile to obtain or renew a driver license, driver permit, identification card or to register or renew a vehicle in Oregon:

(a) A residence address in Oregon where the applicant physically resides which is not a hotel, motel, campground or recreational vehicle park and is not the address of a service provider as defined in OAR 735-010-0008; or

(b) An Oregon Income Tax Return, filed for the previous year. The tax return must include a certification by the applicant that the return is a true photocopy of the original that was filed with the State of Oregon, Department of Revenue. An Oregon Tax Return for a Nonresident (Form 40N) is not proof of residency or domicile.

(2) If an individual residing in Oregon is not able to meet the requirements of section (1) of this rule, a certification of residency or domicile for Oregon driver license, driver permit, identification card or vehicle registration, is required, along with two or more forms of proof of the person's residency or domicile. Acceptable proof includes but is not limited to:

(a) A property tax record, utility bills, rent receipts, a lease or rental agreement or other document that shows that the individual resides in Oregon;

(b) Enrollment records or other documentation that the person is attending an educational institution maintained by public funds and pays resident tuition fees;

(c) Motel, hotel, campground or recreational park receipts showing that the person currently resides in Oregon and has remained in Oregon for six consecutive months;

(d) A statement from a relief agency or shelter that the person receives services in Oregon;

(e) Fuel receipts, motel receipts, or other documents showing that the person has lived in multiple states (more than two) during the past 12 months, and in Oregon for at least six of the last 12 months, as evidence that the person who has no residence address, does not primarily reside in some other state;

(f) Documents showing that the person has a current bank account at a bank or credit union in Oregon and that the account has been open for 60 days or more;

(g) A document showing receipt of public assistance from an agency of the State of Oregon; or

(h) An Oregon voter registration card.

(3) If an individual who does not currently reside in this state but is domiciled in Oregon is not able to meet the requirements of section (1) or (2) of this rule, a certification of residency or domicile for Oregon driver license, driver permit, identification card or vehicle registration, must be completed. The person must provide proof showing intent to return to Oregon as set forth in OAR 735-016-0030(3).

(4) Examples of documentation a business entity may be required to submit in relation to Oregon vehicle registration include but are not limited to:

(a) Property tax records, utility bills, rent receipts, lease agreements or similar documents which show the business entity is currently the occupant of an office or warehouse facility in Oregon along with a copy of service records, fuel receipts, garage receipts or other documents that show the vehicle(s) is being operated in Oregon;

(b) A permit number or other information that shows the person or business holds a permit or other authority issued under ORS Chapter 825 for intrastate transportation;

(c) Storage receipts, repair bills or similar documents which show a vehicle has been left in Oregon; or

(d) Dispatch, deliver, maintenance, tax records, or other documentation that show the vehicles are being housed or dispatched from a location within Oregon or are otherwise being operated in Oregon.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.350, 803.370, 807.050, 807.062 & 821.080
Stats. Implemented: ORS 802.500, 802.520, 803.200, 803.300, 803.325, 803.350, 803.355, 803.360, 803.370, 807.010, 807.040, 807.045, 807.050, 807.062, 807.400, 821.080 & 826.033

Hist.: DMV 7-1999, f. & cert. ef. 12-17-99; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0320

Special Limited Vision Condition Learner's Permit

(1) DMV will issue a special limited vision condition learner's permit when:

(a) An applicant has submitted a report from a licensed vision specialist certifying that the person meets the visual standards set forth in ORS 807.359, has been fitted with a bioptic telescopic lens mounted on or above a carrier lens, and would be aided by using a bioptic telescopic lens when operating a motor vehicle;

(b) An applicant submits proof to DMV that the person has been accepted and has enrolled in a rehabilitation training program with a specialist certified by DMV to train persons with a limited vision condition using a bioptic telescopic lens to drive;

(c) An applicant has passed the knowledge test required under ORS 807.070(2); and

(d) An applicant pays a \$13 fee, as required by ORS 807.370.

(2) The special limited vision condition learner's permit will:

(a) Be valid for six months;

(b) Be in the form of a letter rather than a laminated card with picture;

(c) Specify that the applicant may only drive when accompanied by the specialist(s) named on the permit;

(d) Include the following restrictions:

(A) Driving during daylight hours only; and

(B) The person must wear a bioptic telescopic lens device while driving.

(e) Be mailed to the rehabilitation training program with which the applicant has enrolled.

(3) If a person discontinues the required training or fails to make satisfactory progress toward a Certificate of Competency, the specialist must notify DMV immediately with a recommendation to terminate or extend the person's training program.

(4) If the specialist's recommendation is to terminate the applicant's training program or the applicant withdraws from the program, DMV will cancel the special limited vision condition learner's permit issued to the applicant. If the permit is cancelled, the applicant must reapply for a new permit and satisfy all the requirements set forth in section (1) of this rule. Knowledge test scores remain valid for two years.

(5) If the specialist's recommendation is to extend the applicant's training program, DMV will re-issue a special limited vision condition learner's permit for an additional six-month period if the applicant provides proof of continued enrollment in a rehabilitation training program, as set forth in subsection (1)(b) of this rule, and pays a \$13 fee.

(6) A copy of the special limited condition learner's permit must be kept in the applicant's file at the school offering the rehabilitation training program.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.350 & 807.368

Stats. Implemented: ORS 807.355 — 807.368

Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 18-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08

735-064-0020

Who Can Apply for a Hardship or Probationary Permit

(1) Any Oregon resident whose driving privileges are suspended may apply for a hardship permit unless the person's driving privileges are revoked for any reason or suspended under:

(a) ORS 25.780 for failure to pay child support because 807.250(3) does not allow the issuance of a hardship permit;

(b) ORS 809.260 for court denial of juvenile driving privileges because a person suspended for this reason is eligible for an emergency driver permit per 807.220(4);

(c) ORS 809.280(10) for a controlled substance conviction because 807.250(2) does not allow the issuance of a hardship permit;

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(d) ORS 809.419(1) for failure to appear for or pass required tests because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(e) ORS 809.419(2) for failure to obtain a required medical clearance because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(f) ORS 809.419(3) for a mental or physical condition because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(g) ORS 809.421(1) for habitual incompetence, recklessness or criminal negligence or committing a serious violation of the motor vehicle laws because 809.421(1)(b) states this suspension is subject to any conditions the department determines necessary. The department has determined that a person suspended under this subsection shall not be issued a hardship permit;

(h) ORS 809.419(5) upon notification by the superintendent of a hospital because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(i) ORS 809.419(6) when a person charged with a traffic offense has been found guilty except for insanity because 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(j) ORS 813.400 and 813.403, and the person fails to install or use an IID in a vehicle(s) the person intends to operate, because under 813.602(1)(a) an IID must be installed before the person is eligible for a hardship permit;

(k) ORS 809.280(5) or 809.416(1) for failure to appear in court, because 807.250(4) does not allow the issuance of a hardship permit;

(l) ORS 809.416(2) for failure to pay a fine or obey a court order, because 807.250(4) does not allow the issuance of a hardship permit; or

(m) ORS 809.310(3) or 809.411(9) for committing a fraudulent or unlawful act in applying for or the use of a driver license, driver permit or identification card.

(2) DMV will not issue a hardship permit that authorizes a person to operate a commercial motor vehicle because ORS 807.240(2) does not allow the issuance of a hardship permit to drive a commercial motor vehicle.

(3) Any Oregon resident whose driving privileges are revoked as an habitual traffic offender may apply for a probationary permit unless the person's driving privileges are also revoked for any reason other than being an habitual traffic offender or are also suspended for any of the reasons listed in section (1) of this rule. DMV will not issue a probationary permit that authorizes a person to operate a commercial motor vehicle because ORS 807.270(4) does not allow the issuance of a probationary permit to drive a commercial motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010 807.240, 807.252 & ORS 807.270
Stats. Implemented: ORS 807.062, 807.240, 807.250, 807.270, 809.265, 809.380, 809.390, 809.419, 809.421, 813.500 & 813.602
Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0085; MV 12-1989, f. & cert. ef. 3-20-89; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 4-1999(Temp.), f. & cert. ef. 10-13-99 thru 4-9-00; DMV 1-2000, f. & cert. ef. 3-10-00; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 25-2003, f. 12-15-03 cert. ef. 1-1-04;

735-080-0060

Parking Identification Card

(1) An applicant for an individual disabled parking permit who does not have a driver license, driver permit, or identification card and is unable to go to a DMV office to be photographed, must obtain a parking identification card. The applicant must submit the following to DMV:

(a) An application for a parking identification card that includes the applicant's name, residence address, date of birth, height, weight, and signature. It must also include a statement from a licensed physician that because of the applicant's medical or physical condition, it is impractical or harmful for the applicant to appear at a DMV office to be photographed; and

(b) The fee for issuance of a parking identification card under ORS 807.410(1).

(2) The applicant must mail the application, fee and statement from a physician to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314.

(3) A parking identification card issued under this rule expires on the applicant's birthday, in the eighth calendar year after the year of issuance or on the date it is no longer medically impractical or harmful to the applicant to appear at a DMV office to be photographed for an identification card, whichever is earlier.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 811.603
Stats. Implemented: ORS 811.603 & 2008 OL Ch 1

Hist.: 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 3-19-02; DMV 6-2002, f. & cert. ef. 3-14-02; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08 DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08

735-080-0070

Replacement/Renewal of a Parking Identification Card

(1) DMV may replace a parking identification card if the card is lost, mutilated or destroyed. Replacement of a disabled parking identification card is subject to the following:

(a) If a statement from a licensed physician is on file with DMV, the person must submit an application for replacement and the replacement fee under ORS 807.410 to DMV, but does not need to submit a statement from a licensed physician;

(b) If a statement from a licensed physician is not on file with DMV, the person must apply for a parking identification card as provided in OAR 735-080-0060(1) and (2);

(c) An applicant for a replacement parking identification card must certify that the original parking identification card has been lost or destroyed; and

(d) The replacement parking identification card will have the same expiration date as the parking identification card it replaces.

(2) DMV may renew a parking identification card upon expiration or within one year after the expiration date if the person is also renewing the disabled person parking permit. To renew, an applicant must submit the following to DMV:

(a) A renewal application containing the applicant's name, residence address, date of birth, height, weight, signature and a signed statement from the applicant that it is still medically impractical or harmful for the applicant to appear at a DMV office to be photographed.

(b) The renewal fee under ORS 807.410; and

(c) Proof of residence address as described in OAR 735-062-0030 if the residence address of the applicant has changed since issuance of the most recent parking identification card.

(3) A renewed parking identification card expires eight years from the expiration date on the immediately preceding identification card or on the date it is no longer medically impractical or harmful to the applicant to appear at a DMV office to be photographed for an identification card, whichever is earlier.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 811.603
Stats. Implemented: ORS 811.603 & 2008 OL Ch 1

Hist.: 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 3-19-02; DMV 6-2002, f. & cert. ef. 3-14-02; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08

Rule Caption: Amends Rules Relating to Vehicle Dismantlers.

Adm. Order No.: DMV 13-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 6-23-08

Notice Publication Date: 5-1-2008

Rules Amended: 735-024-0070, 735-024-0080, 735-032-0020, 735-152-0000, 735-152-0040, 735-152-0050, 735-152-0060

Rules Repealed: 735-024-0070(T), 735-024-0080(T), 735-032-0020(T), 735-152-0000(T), 735-152-0040(T), 735-152-0050(T), 735-152-0060(T)

Subject: This rulemaking implements legislation enacted by the 2007 Legislative Assembly. Chapter 683, Oregon Laws 2007: (1) requires dismantlers to surrender a vehicle's title, ownership record or other ownership document to DMV within 30 days of date a vehicle is acquired for dismantling, (2) grants DMV additional authority to impose sanctions on vehicle dismantlers and requires DMV to adopt rules establishing appropriate sanctions, and (3) under the legislative initiative, dismantlers are no longer subject to the requirements of ORS 819.010.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-024-0070

Notice of Vehicles to be Wrecked, Dismantled, Disassembled, or Substantially Altered in Form - Responsibility of Parties

(1) The types of vehicles that are subject to the provisions of ORS 819.010 (wrecked, dismantled, disassembled or substantially altered) include:

(a) Vehicles of the type that, when operated over the highways of this state, are required to be registered and titled;

(b) Class I or III all-terrain vehicles;

(c) Snowmobiles; and

(d) Any other vehicle that has been issued a title by DMV or by another jurisdiction.

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(2) This rule does not apply to a person who holds a current valid dismantler certificate issued under ORS 822.110.

(3) ORS 819.010 and any related rules apply if the activity described in 819.010 and OAR 735-024-0050 is performed in this state, and the vehicle is of a type covered in section (1) of this rule. This applies to vehicles titled in Oregon, those titled in another jurisdiction, and any vehicle not subject to title requirements.

(4) Primary ownership documents for vehicles described in section (1) of this rule may be surrendered to DMV, in place of the certificate of title where a title does not exist, or where ownership is being transferred by operation of law and the title is not available.

(5) The Oregon title certificate, foreign title certificate, or primary ownership document must be surrendered to DMV together with the application for salvage title, if a salvage title is required.

(6) The Oregon title and, unless lost or completely destroyed, the vehicle's registration card and registration plates must be surrendered to DMV along with a written statement that indicates the vehicle was dismantled, disassembled, wrecked or substantially altered, if a salvage title is not required. The statement must be submitted on a DMV Form 735-6017, "Notice of Vehicle to be Dismantled/Proof of Compliance."

(7) Vehicles that are subject to this rule may not be repaired, rebuilt, transferred, or the vehicle's frame or unibody used for repairing or constructing another vehicle, until a salvage title is applied for and issued, consistent with ORS 819.016 and 819.018.

(8) If a salvage title is not required, DMV may issue proof of compliance upon request, if:

(a) The title or primary ownership document is surrendered to DMV;

(b) DMV is provided with documentation that indicates the vehicle has been wrecked, dismantled, disassembled or substantially altered; and

(c) DMV is satisfied that a salvage title is not required.

(9) The act of wrecking, dismantling, disassembling or substantially altering a vehicle does not by itself cause a vehicle to be considered a totaled vehicle. Such a vehicle:

(a) Is subject to the requirements under ORS 819.010 and DMV rules; and

(b) Is not considered totaled, and is not subject to requirements that apply to totaled vehicles unless the vehicle was determined to be totaled before the vehicle was wrecked, dismantled, disassembled or substantially altered.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.010, 819.012, 819.014, 819.016 & 819.018

Stats. Implemented: ORS 819.010, 819.012, 819.014, 819.016, 819.018, 819.030 & 819.040

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08

735-024-0080

Abandoned Vehicles Sold Under ORS 819.220

(1) This rule defines terms and establishes procedures and requirements for the sale and purchase of abandoned vehicles under ORS 819.220. As used in this rule:

(a) "Authority" means an agency authorized under ORS 819.140 to take custody of and dispose of abandoned vehicles.

(b) "Purchaser" means a person to whom the authority sold a vehicle under the provisions of ORS 819.220 but does not include a dismantler.

(2) In addition to all other applicable requirements of ORS 819.220, an authority must provide the purchaser a certificate of sale and a Notice of Vehicle to be Dismantled/Proof of Compliance (DMV Form 735-6017).

(3) The purchaser must:

(a) Submit Form 735-6017 to DMV seven days before the date of taking any action to wreck, dismantle, disassemble or substantially alter the form of the vehicle; and

(b) Submit a second Form 735-6017 to DMV along with the title or primary ownership document (e.g., sheriff's certificate of sale), within 30 days from the date the vehicle was wrecked, dismantled, disassembled or substantially altered, if the vehicle is exempt from salvage title requirements under ORS 819.016 or OAR 735-024-0130.

(4) Except as otherwise provided in ORS 819.016 and OAR 735-024-0130, a purchaser must apply to DMV for a salvage title.

(5) Even if other provisions of this rule apply, a purchaser who purchased a vehicle under ORS 819.220 before January 1, 1992, is not required to apply for salvage title unless:

(a) The vehicle is repaired. If the vehicle is repaired, the applicant may apply for a salvage title or a branded certificate of title showing the vehicle as assembled, reconstructed or a replica, whichever applies;

(b) The vehicle is wrecked, dismantled, disassembled or substantially altered in form; or

(c) The purchaser transfers ownership of the frame or unibody.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 819.140 & 819.220

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert.

735-032-0020

Plates Considered Void

Registration plates that are required to be surrendered to DMV are void and may not be used to register or operate a vehicle again. This does not apply to plates surrendered to DMV in error and that have not already been destroyed.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 803.350, 803.380, 803.590, 809.080 & 809.110

Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0320; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08

735-152-0000

Definitions

As used in this division the following definitions apply:

(1) "Acquires," "acquired" or "acquisition" means physical possession of a motor vehicle together with possession of the vehicle's ownership record.

(2) "Cancellation" has the same meaning as "revocation" as defined in section (17) of this rule.

(3) "Certificate of sale" has the same meaning as defined in ORS 801.183.

(4) "Date of sale" means the date that a purchaser takes possession of a major component purchased from a dismantler.

(5) "Destroy" has the same meaning as defined in ORS 822.133.

(6) "Dismantler" has the same meaning as defined in ORS 801.236.

(7) "Dismantle" means one or more major component parts are removed from a motor vehicle acquired by a dismantler.

(8) "Dispose" or "disposed of" means a motor vehicle acquired by a dismantler that is transferred to another person or is dismantled or destroyed.

(9) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(10) "Employee" means a person over whom a dismantler exercises the type of control typically associated with an employer, including:

(a) Determining the frequency, method and amount of compensation;

(b) Determining whether the person's work is continuous or intermittent;

(c) Determining the hours or frequency of a person's work; or

(d) Retaining the ability to terminate the relationship.

(11) "Major component part" has the same meaning as defined in ORS 822.137.

(12) "Primary ownership document" or "ownership record," as used in ORS 822.135, has the same meaning as "primary ownership" record as defined in 801.402 and includes the primary ownership documents described in OAR 735-020-0010 or an abandoned vehicle certificate described in 735-024-0077.

(13) "Person" means an individual, partnership, corporation, association, or any other business organization if the context in which the term is used could also include these organizational forms.

(14) "Principal" means any owner, partner, corporate officer or other person who controls or manages the business organization or the employees or agents of the business organization.

(15) "Probation" means a period of time specified by DMV that a dismantler may continue to operate, but only under terms or conditions established by DMV.

(16) "Revocation" means to void and terminate a dismantler certificate or the principal's right to apply for a dismantler certificate.

(17) "Sanction" means an action taken by DMV against a dismantler's certificate, or the principal of a dismantler business, for non-compliance with Oregon law or DMV rule related to dismantlers or the operation of a dismantler business.

(18) "Suspension" means the temporary withdrawal of the authority to act as a dismantler.

(19) "Vehicle Business" includes vehicle dealers as defined in OAR 735-150-0010(14), dismantlers, towing businesses, vehicle transporters and repair shops.

(20) "Violation" means any violation of Oregon law or a DMV rule applicable to a dismantler issued a certificate or any person engaged in dismantling activities.

(21) "Warning" means a documented warning or correction notice issued to a principal or employee of a dismantler business.

(22) "Wrecked vehicle" has the same meaning as defined in ORS 822.133.

(23) "Written report" means DMV Form 270, Vehicle Dismantler's Notice and the original ownership record for the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.135 & 822.137

ADMINISTRATIVE RULES

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145 & 822.150
Hist.: MV 7-1987, f. & cert. ef. 7-13-87; MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08

735-152-0040

Dismantler Violations Subject to Sanction

A dismantler is subject to the sanctions described under OAR 735-152-0050 if the dismantler:

(1) Commits the offense of improperly conducting a motor vehicle dismantling business for any of the reasons set forth in ORS 822.133, 822.135, 822.145 or relevant rules adopted by DMV.

(2) Allows a person who is not an employee of the dismantler to imply or represent an affiliation with the dismantler business to engage in any activity that would subject that person to dismantler certification and regulatory requirements.

(3) Fails to allow DMV to conduct an inspection.

(4) Is issued notice that the dismantler's bond under ORS 822.120 is cancelled.

(5) Fails to pay any civil penalty imposed under ORS 822.133 and 822.137.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.135 & 822.137
Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145 & 822.150
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08

735-152-0050

Sanctions

(1) DMV may impose sanctions against any person issued a valid dismantler certificate or a principle of a dismantler business, if it determines either has violated any Oregon law or DMV rule relating to the operation of a dismantler business.

(2) Sanctions may be imposed against either or both of the following:

(a) A dismantler's certificate;

(b) A principal of the dismantler business.

(3) Factors DMV may consider when imposing a sanction against a dismantler include:

(a) The severity of the violation or its impact on the public;

(b) The number of similar or related violations;

(c) Whether a violation was willful or intentional; and

(d) Any previous sanction, civil penalty or warning issued or imposed against the dismantler or principal.

(4) DMV determines the appropriate sanction to impose when it determines a violation has occurred. These may include one or more of the following:

(a) Verbal or written warning, including a correction notice.

(b) Probation under conditions set by DMV, for up to three years.

(c) Suspension of the dismantler certificate and the right to apply for a dismantler certificate, for up to three years.

(d) Revocation of the dismantler certificate and the right to apply for a dismantler certificate. A person subject to permanent revocation of a dismantler certificate is ineligible to apply for a new dismantler certificate, for up to five years.

(e) Suspension of the right of a principal of a dismantler business to apply for a dismantler certificate for a different vehicle-related business, or in a different business name, for up to three years.

(f) Revocation of the right of a principal of a dismantler business to apply for a dismantler certificate for a different vehicle-related business, including a vehicle-related business with a different business name, for up to five years.

(g) Cancellation of the dismantler certificate if it is determined the applicant or a principal of the business is ineligible for a dismantler certificate.

(h) Immediate suspension or cancellation as provided in ORS 822.145(2) upon receipt of legal notice the dismantler's bond under 822.120 is canceled.

(i) Immediate suspension or cancellation for failure to pay any penalty imposed under ORS 822.137 and OAR 735-152-0045.

(5) A dismantler or principal whose business certificate or privileges are suspended, canceled or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS Chapter 183.

(6) Except as provided in section (7) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 20 days of the date of the notice of revocation, suspension or cancellation. A hearing request received in a timely manner shall result in a withdrawal of the revocation suspension or cancellation pending the outcome of the hearing.

(7) In the instance of an immediate suspension or cancellation as provided by subsection (4)(g) or (h) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 90 days of the date the notice is issued. A hearing request received in a timely manner shall not result in a withdrawal of the suspension or cancellation pending the outcome of the hearing.

(8) In order for a request for hearing to be timely, the request must be received by DMV within the time periods established in sections (6) and (7) of this rule. If the request for hearing is not timely received, the person waives their right to a hearing, except as provided in OAR 137-003-0528. The time periods will be computed as set forth in 137-003-0520(8).

(9) When DMV does not receive a timely request for a hearing, the dismantler or principal defaults, waives the right to a hearing and DMV's file constitutes the record of the case.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.133 & 822.137

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145 & 822.150
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08

735-152-0060

Civil Penalty Matrix for Certified Dismantlers

DMV may impose a civil penalty against a motor vehicle dismantler for any violation described under ORS 822.133, 822.137 and DMV rules. DMV adopts this civil penalty matrix to determine civil penalty amounts that may be imposed against dismantlers for specific violations. DMV may modify a civil penalty assessed against a dismantler under the provisions of OAR 735-152-0045. Under this rule, an offense is a "second or subsequent offense" if a dismantler committed the same offense within three years of the offense under consideration.

(1) Fraudulently obtaining a dismantler certificate by submission of an application under OAR 735-152-0005 containing a false statement or omission of a material fact: \$1,000, for the first and subsequent violation(s).

(2) Failure to notify DMV of any change in the information provided to DMV in the application submitted under OAR 735-152-0005 within 30 days of the change:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(3) Failure to comply with any provision of ORS 822.137(2)(f) or OAR 735-152-0031 concerning dismantler motor vehicle records:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(4) Failure to comply with any provision of ORS 822.137(2)(f) or OAR 735-152-0031 concerning dismantler major component part records:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(5) Failure to comply with ORS 822.133(2)(b), concerning removing parts or destroying a motor vehicle before obtaining an ownership record for the vehicle:

(a) For the first violation: \$500;

(b) For the second and subsequent violation(s): \$1,000.

(6) Failure to comply with ORS 822.133(2)(a), by acquiring a motor vehicle or major component part without first obtaining a certificate of sale and, if applicable, a certificate of title:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(7) Failure to comply with ORS 822.133(2)(a) and OAR 735-152-0025(3) concerning physically separating or visually labeling a wrecked vehicle:

(a) For the first violation: \$250;

(b) For the second violation: \$500;

(c) For the third and subsequent violation(s): \$1,000.

(8) Failure to comply with ORS 822.137(2)(b), regarding the possession, sale or disposal of a motor vehicle or any part of a motor vehicle knowing that the vehicle or part has been stolen: \$1,000 for the first violation and subsequent violation(s).

(9) Failure to comply with ORS 822.137(2)(c), regarding selling, buying, receiving, concealing, possessing or disposing of a motor vehicle or any part of a motor vehicle having a missing, defaced, intentionally altered or covered vehicle identification number, unless directed to do so by a law

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enforcement official: \$1,000 for the first violation and subsequent violation(s).

(10) Failure to comply with ORS 822.137(2)(d) by committing a forgery in the second degree, as defined in ORS 165.007, or misstating a material fact relating to a certificate of title, registration or other document related to a motor vehicle that has been reassembled from parts of other motor vehicles: \$1,000 for the first violation and subsequent violation(s).

(11) Failure to comply with ORS 822.137(2)(e) by fraudulently creating or modifying a dismantler certificate: \$1,000 for the first violation and subsequent violation(s).

(12) Failure to comply with ORS 822.137(2)(h) concerning a dishonest act or omission during the sale of a motor vehicle or major component part that, as determined by DMV, causes a loss to the purchaser: \$1,000 for the first violation and subsequent violation(s).

(13) Failure to comply with ORS 822.137(2)(i) concerning being convicted of a crime involving false statements or dishonesty that directly relates to the business of the dismantler or suffers any civil judgment imposed for conduct involving fraud, misrepresentation or conversion: \$1,000 for the first violation and subsequent violation(s).

(14) Failure to comply with ORS 822.133(2)(e) and OAR 735-152-0034 concerning furnishing DMV with a written report, in a form established by DMV by rule, after a wrecked vehicle is dismantled or destroyed:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(15) Failure to comply with ORS 822.133(2)(c) concerning failure to demolish the registration plates of a wrecked vehicle at the time the ownership record is received:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.133, 822.135, 822.137 & 822.150

Implemented: ORS 183.430, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140 & 822.150

Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08

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Rule Caption: Establishes Eligibility Requirements and Procedures for the Issuance of Veterans' Recognition Registration Plates.

Adm. Order No.: DMV 14-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 6-23-08

Notice Publication Date: 5-1-2008

Rules Amended: 735-040-0040, 735-040-0080, 735-040-0090, 735-040-0100

Rules Repealed: 735-040-0040(T), 735-040-0050, 735-040-0080(T), 735-040-0090(T), 735-040-0100(T)

Subject: ORS 805.105 requires DMV to establish: (1) General qualifications for veterans' groups that wish to become eligible for veterans' recognition registration plates; (2) When DMV may cease to issue veterans' recognition registration plates; (3) What constitutes proof of veteran status for the issuance of veterans' recognition registration plates, and (4) What constitutes proof that a person is a surviving family member of a person killed in action during an armed conflict while serving in the Armed Forces of the United States in order to qualify for special veterans' recognition registration plates that include a gold star decal and the words "Gold Star Family." DMV amended its special group registration plate rules to conform to the law changes.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-040-0040

Definitions

As used in OAR 735-040-0040 through 735-040-0100:

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Department of Transportation.

(2) "Gold Star Family registration plate" means a registration plate issued to a surviving family member of a person killed in action during an armed conflict while serving in the Armed Forces of the United States.

(3) "Group plates" means plates issued under ORS 805.205 for institutions of higher education and non-profit groups who are tax exempt under 501 (c)(3) of the Internal Revenue Code.

(4) "Group" means any organization or institution that applies for or receives approval for the issuance of group plates naming or describing that organization or the institution that they represent.

(5) "Institution of Higher Education" or "institution" means a post secondary institution that has been awarded and currently holds accreditation by the respective commissions of one of six regional accrediting associations that include the:

- (a) Northwest Association of Schools and Colleges;
- (b) Middle States Association of Colleges and Schools;
- (c) New England Association of Schools and Colleges;
- (d) North Central Association of Colleges and Schools;
- (e) Southern Association of Colleges and Schools; and
- (f) Western Association of Schools and Colleges.

(6) "Non-profit group" means a non-profit group that meets the qualifications for tax-exempt status under section 501 (c)(3) of the Internal Revenue Code.

(7) "An expression of political opinion" includes words, letters or names that:

(a) Connote or denote issues commonly associated with politics or the political process;

(b) Connote or denote social issues or causes that have become factionalized and thus have taken on their own political status (e.g., abortion, environmental issues, etc.);

(c) Connote or denote a definable class of persons and that ridicule or support superiority of that class; or

(d) Promote or discourage social causes, or that ridicule or support superiority of a class or are political.

(8) "An expression of religious belief" means words, letters or names that affirm or support a particular religion or creed, express adherence to a particular sect or denomination, express belief in or the absence of belief in a supreme being or promote or discourage any form of exercise of religion.

(9) "Veterans' group" as used in ORS 805.105 and Division 40 rules, means a group or organization that meets the qualifications for veterans' recognition registration plates under OAR 735-040-0080.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.205 & 805.105

Stats. Implemented: ORS 805.205 & 805.105

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 14-2008, f. & cert. ef. 6-23-08

735-040-0080

Veterans' Groups Qualifications; Veterans' Recognition Registration Plates

(1) To become eligible for veterans' recognition registration plates issued under ORS 805.105, and this rule, a veterans' group must submit the following to DMV:

(a) A completed and signed Application for Approval of Veterans' Group Plates (DMV Form 7069), a copy of the group's bylaws, and documentation sufficient to DMV that:

(A) The group is a non-profit organization established to recognize, represent or support a branch of the Armed Forces of the United States; and

(B) The group, or a chapter of the group, is physically located in Oregon.

(b) The name, address and phone number of:

(A) Each group official, officer and director; and

(B) A person authorized by the group to act as the group's representative for purposes of veterans' recognition registration plates.

(c) The words, initials or copy of the service-related decal requested to appear on the group's plate. The group's representative must certify that the group is authorized to use the information or materials submitted under this subsection;

(d) If applicable, any requested restriction on the issuance of the group's plates as described under OAR 735-010-0090;

(e) An estimate of the number of plates the group will sell during the 12-month period following the date of application;

(f) Fees estimated by DMV to cover its costs to design and produce the requested plates; and

(g) The financial institution and account number selected by the group for the deposit of plate surcharge amounts collected by DMV from the sale of the group's veterans' recognition registration plates. If no information is provided, collected surcharge amounts will be deposited in the trust fund established under ORS 406.050 for paying the expenses of operating the Oregon Veterans' Home.

(2) DMV may request a veteran's group to provide any information it considers necessary to determine a group's eligibility for veterans' group registration plates or to verify the group is authorized to use requested words, initials or a service-related decal.

(3) DMV will not issue veterans' recognition registration plates to a group if it determines:

(a) The group does not meet the requirement for veterans' recognition plates under ORS 805.105 or this rule;

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(b) The group's application is incomplete or if the application contains false information;

(c) The words, initials or service-related decal requested for use on the group's plates do not correctly name, identify or represent the group or are not authorized for use on veterans' recognition registration plates; or

(d) The authorized representative fails to provide information or documentation requested by DMV.

(4) DMV may stop issuing a group's veterans' recognition plates or withdraw a group's eligibility if the group:

(a) Is not authorized to use words, initials or a service-related decal previously approved for use on the group's veterans' recognition plates;

(b) Fails to file an annual statement of continuing eligibility as required under section (5) of this rule; or

(c) Fails to meet or comply with any other requirement for veterans' recognition plates under ORS 805.105 or this rule.

(5) DMV will notify the group upon DMV's approval or denial of the group's application, or upon withdrawal of group's eligibility.

(6) Once approved as an eligible group, the group must file an annual statement of continuing eligibility certifying the group continues to meet the requirements for a veteran's group.

(7) The group must notify DMV immediately if:

(a) There is a change in the name, address or phone number of a group official or the group's authorized representative listed on the group's most recent application or annual eligibility statement; or

(b) The group is dissolved or no longer meets the eligibility requirements for a veteran's group under this rule.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.205 & 805.206

Stats. Implemented: ORS 805.205 & 805.206

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 14-2008, f. & cert. ef. 6-23-08

735-040-0090

Veterans' Recognition Registration Plates for Veterans' Groups; Restrictions on Issuance; Proof of Veteran Status

(1) Issuance of veterans' recognition registration plates may be restricted to certain persons as provided under Section (2), ORS 805.105(1)(c) and this rule. Conditions for restrictions are as follows:

(a) Restrictions on issuance of a particular veterans' recognition registration plate as requested by a veterans' group must relate to a person's service in the Armed Services of the United States. For example:

(A) DMV may approve a request to restrict issuance of a particular veterans' recognition registration plate to only veterans or to only those awarded a Purple Heart medal; and

(B) DMV will not approve a request to restrict veterans' recognition registration plate issuance to only veterans who are members of a particular group.

(b) A veteran's group requesting a restriction on plate issuance must do so on the initial Application for Approval of Veteran Group Plates. The group must describe the restriction(s) and the basis for the restriction;

(c) All restrictions must be approved by DMV.

(d) If a requested restriction is approved, DMV will consult the group in determining the criteria DMV will use in issuing veterans' recognition registration plates for that group.

(2) Veterans' recognition registration plates may not be issued as custom plates, or in conjunction with any other special registration or plate type.

(3) When a veterans' group approved by DMV, or the Director of Veterans' Affairs requires proof of veteran status or proof of receipt of a service-related medal, or the applicant requests "Gold Star Family" registration plates, DMV will accept the following as proof of eligibility:

(a) For plates that include a decal depicting an insignia of a branch of the Armed Services:

(A) For military service 1950 or after, a Defense Department Form 214, Certificate of Release or Discharge from Active Duty (DD 214), a Correction to DD 214 Form (DD 215); or

(B) For military service before 1950, a separation document or form issued by a branch or department of the US Armed Services.

(b) For a veterans' group with a service-related restriction approved by DMV under OAR 735-040-0080:

(A) For military service 1950 or after, a DD 214 or DD 215; or

(B) For military service before 1950, a separation document or form issued by a branch or department of the US Armed Services; and

(C) A completed signed Group Plate Eligibility Certification (DMV Form 735-6940) certifying the applicant is eligible to receive the group's plates.

(c) For plates that include a decal depicting a service-related medal:

(A) For military service 1950 or later, a DD 214 or DD 215; or

(B) For military service before 1950, a separation document or form issued by a branch or department of the US Armed Services; and

(C) A letter, award certificate or other document issued by the US Department of Defense showing the applicant is a recipient of the service-related medal.

(D) For plates displaying a gold star and the words "Gold Star Family," a completed, signed Group Plate Eligibility Certification (DMV Form 735-6940) certifying the applicant is a surviving family member. For purposes of this rule, a surviving family member includes a person who is a parent, spouse, partner in a domestic partnership or dependent of a person killed in action during an armed conflict while serving in the Armed Forces of the United States.

(4) A DD 214, DD 215 or separation form or document required under section (3) of this rule must have been issued under honorable conditions.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.105 & 2007 OL Ch. 99

Stats. Implemented: ORS 805.105 & 2007 OL Ch. 99

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 14-2008, f. & cert. ef. 6-23-08

735-040-0100

Refund of Fees; Withdrawal and Reinstatement of Group Plates

(1) DMV will refund a group's \$10,000 application fee if the group sells at least 1,000 sets of plates within the first 12-month period following issuance of the plates. The refund will be issued in the name of the group and mailed to the group's authorized representative designated on the group plate application form.

(2) DMV will stop production of a group's plate if the group:

(a) Fails to provide an annual statement as required under 735-040-0095 or 735-040-0097;

(b) The group ceases to exist;

(c) The group's approval is otherwise withdrawn;

(d) DMV determines the word(s), initials, image or logo used to name or describe the group are inconsistent with statute or rule; or

(e) DMV fails to sell or renew at least 500 sets of plates within any 12 consecutive month period. For purposes of this rule and OAR 735-040-0055, 735-040-0061, 735-040-0095 or 735-040-0097:

(A) "Sets" mean any plate(s) issued other than those issued as a replacement plate(s), whether one or two plates are issued; and

(B) The first day of the month in which the group plates are first offered for sale will be used to determine the start of the first 12-month period.

(3) DMV will notify the group's authorized representative if DMV will no longer produce plates for the group.

(4) Except as provided in section (5) of this rule, when DMV stops production of a group's plate DMV will continue to issue any remaining plate inventory until the inventory is depleted.

(5) If DMV stops production of a group's plate because the word(s), initial(s), image or logo used to identify the group is determined to be inconsistent with statute or rule:

(a) DMV may restart production if:

(A) The group is otherwise eligible and qualified to have group plates; and

(B) After consulting with the authorized representative, a different word(s), initial(s), image or logo is approved by DMV to identify the group or institution; and

(b) DMV will destroy any remaining plate inventory.

(c) If DMV ceases to order plates for any reason not covered in this section, DMV will continue to issue any remaining plate inventory until the inventory is depleted.

(6) If production of a group's plate is discontinued for reasons other than those described in section (5) of this rule, to restart production, the group must reapply and pay all required fees as described in OAR 735-040-0055, 735-040-0061, 735-040-0095 or 735-040-0097.

Stat. Auth.: ORS 184.616; 184.619, 802.010, 805.205 & 805.206

Stats. Implemented: ORS 805.205 & 805.206

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 14-2008, f. & cert. ef. 6-23-08

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Rule Caption: Establishes Procedures and Requirements for the Issuance of Congressional Medal of Honor Registration Plates.

Adm. Order No.: DMV 15-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 6-23-08

Notice Publication Date: 5-1-2008

Rules Amended: 735-046-0000, 735-046-0010, 735-046-0050

Rules Repealed: 735-046-0000(T), 735-046-0010(T), 735-046-0050(T)

Subject: These amendments implement legislation enacted by the 2007 Legislative Assembly which directs DMV to issue custom reg-

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istration plates to motor vehicle owners who are qualified Congressional Medal of Honor recipients. These rules define terms and describe the procedures and requirements for the issuance of custom, or special, registration plates — sometimes referred to as personalized license plates, add new provisions, and reorganize and clarify the definitions set out in the rule. Other changes were made for clarity and readability.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-046-0000

Custom Plates — Definitions

The following definitions apply to OAR 735-046-0000 through OAR 735-046-0050:

(1) “Current Issue” means any registration plate type, plate background or plate series approved by DMV for issuance.

(2) “Current use” means any registration plate type, plate background or plate series that is no longer issued, but is approved for registration renewal or for special interest registration. Examples of current use registration plates include:

(a) Passenger vehicle plates issued in 1956 or later; and

(b) Motorcycle or moped plates issued in 1967 or later.

(3) “Custom plates” mean customized registration plates authorized under ORS 805.240.

(4) “DMV” means the Driver and Motor Vehicle Services Division of the Department of Transportation.

(5) “Plate choice” means the numbers or letters or combination of numbers and letters (characters) requested by an applicant for custom plates. For purposes of custom plates, the letter “O” and the number “zero” are identical. A plate choice does not include a plate’s background, design, method of validation, or any other information DMV may require.

(6) “Plate configuration” means a unique combination of numbers or letters that have been or may be assigned to registration plates.

Stat. Auth.: ORS 184.616 ORS 184.619 & 802.010

Stats. Implemented: ORS 805.240

Hist.: MV 1-1981, f. & ef. 2-5-81; MV 1-1983, f. & ef. 1-28-83; MV 9-1987, f. & ef. 9-1-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0058; MV 25-1988, f. & cert. ef. 10-3-88; MV 48-1989, f. & cert. ef. 11-16-89; DMV 9-1994, f. & cert. ef. 9-30-94; DMV 8-1997, f. & cert. ef. 10-16-97; DMV 15-2008, f. & cert. ef. 6-23-08

735-046-0010

Custom Plates: Application and Standards

(1) A person who wishes to obtain custom plates must submit an application for custom plates and all applicable fees to DMV. Custom plate choices:

(a) May not be reserved in advance of application and payment of required fees; and

(b) Are approved and assigned by DMV on a first-come, first-served basis. “Application” as used in this subsection may include application by phone provided DMV is in possession of the required fees. For example, a call is made to request an alternate choice because the original choice is not available.

(2) Except as provided for in OAR 735-046-0020, an applicant for custom plates must qualify for Oregon title and registration for the vehicle listed on the custom plate application.

(3) A custom plate choice is assigned to a vehicle at the time it is issued by DMV.

(4) A custom plate choice must:

(a) Be compatible with DMV’s computer system;

(b) Not be identical to any plate configuration reserved for current Congressional Medal of Honor Recipients, Oregon office holders, the Governor or Honorary Consular Corps Representatives, unless the custom plate is being issued under the provisions of OAR 735-046-0050;

(c) Not begin with the letters CMH, MOH, SEN, REP, USS, USR or ORE and be followed by numbers;

(d) Be alphabetic or numeric characters, or alphanumeric characters. A plate choice may not include punctuation or symbols other than a dash or space;

(e) Include at least one alphabetic or numeric character;

(f) Be limited to no more than six alphabetic characters, numeric characters, spaces or dashes, except that a seventh character may be a space or dash;

(g) Except as provided in section (6) of this rule, not be identical to any other plate configuration in current use. The use of a space or a dash within a plate choice is not considered when determining whether the plate is identical to another plate configuration; and

(5) In addition to other provisions of this rule, all of the following apply to approval of a plate choice that is identical to a plate configuration that is in current use:

(a) DMV may approve a plate choice that conflicts with a plate configuration currently in use for motor vehicles registered under ORS 803.420(1) (i.e., passenger plated vehicles) if:

(A) The specific plate configuration requested has previously been issued and is not still in inventory or is reserved for future issuance;

(B) The previously issued plates bearing the plate choice are surrendered to DMV with the custom plate request, or are no longer in circulation. If there is any question about such plates being in circulation, it is the applicant’s responsibility to satisfy DMV that the plates have been destroyed, surrendered to DMV or another jurisdiction or are not available for use on a vehicle; and

(C) The plate choice is to be assigned to a vehicle that qualifies for registration under ORS 803.420(1).

(b) For motor vehicles other than those registered under ORS 803.420(1), specifically, vehicles that are not passenger plated vehicles, DMV may approve a plate choice that is identical to a plate configuration that is in current use if:

(A) The vehicle to which the custom plates are to be issued is of a different type than the vehicle to which the plates bearing the identical plate configuration are in current use or could be issued. For example, a plate choice that is identical to a disabled veteran plate configuration (for example D00001) cannot be assigned to a custom plate issued to either a passenger vehicle or motor home. A plate choice that is identical to a motor home plate configuration (for example H00001) cannot be assigned to a custom plate issued to a motor home but can be assigned to a custom plate issued to a passenger vehicle;

(B) The plate choice requested is not currently assigned to a registration plate; and

(C) The plate choice requested will not be assigned to a future plate series.

(6) DMV will not approve a custom plate choice, including plate choices that would do so by means of foreign or slang words or phrases, by use of phonetic, numeric or reverse spelling, or by being viewed in mirror image, that:

(a) Would have the effect of alarming, threatening, offending or misleading a reasonable person. Such choices may include, but are not limited to, combinations of letters, numbers or both that:

(A) Refer to intimate bodily parts or to sexual or excretory acts or functions;

(B) Refer in an alarming or offensive manner to a person or class of persons on the basis or race, color, gender, ethnic heritage, national origin, or other characteristic;

(C) Suggest that the vehicle to which the custom plate is issued is an official vehicle of a public agency or official, when it is in fact not such a vehicle; and/or

(D) Refer to illegal acts.

(b) Refers to alcoholic beverages, or controlled substances or paraphernalia used in the consumption thereof by combinations of letters, numbers or both.

(7) DMV may use any reliable lexicological source to determine the meaning of any word, symbol or phrase.

(8) When reviewing a plate choice for approval, DMV need not consider the applicant’s subjective intent or declared meaning.

(9) DMV approve the transfer of registration plates that are not from a current issue of plates as custom plates under the provisions of ORS 805.242. All of the following apply to such a transfer:

(a) For vehicles which require two registration plates, the applicant must have two registration plates available for transfer to the vehicle;

(b) The registration plates being transferred must not be so old, damaged, mutilated or otherwise rendered illegible as to be not useful for purposes of identification;

(c) The registration plates being transferred must be from a series in current use;

(d) The registration plates may only be transferred to a vehicle type that is otherwise eligible for custom plates; and

(e) The registration plates may only be transferred to a vehicle of the same registration type to which they were originally issued (e.g., passenger vehicle to passenger vehicle).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.200, 805.205, 805.220 & 2007 OL Ch. 311
Stats. Implemented: ORS 803.420, 803.535, 805.220, 805.240, 805.242, 805.250 & 2007 OL Ch. 311

Hist.: MV 25-1988, f. & cert. ef. 10-3-88; MV 48-1989, f. & cert. ef. 11-16-89; DMV 9-1994, f. & cert. ef. 9-30-94; DMV 8-1997, f. & cert. ef. 10-16-97; DMV 23-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 15-2008, f. & cert. ef. 6-23-08

735-046-0050

Congressional Medal of Honor, Elected Official and Honorary Consul Plates

(1) Requirements and Qualifications. In addition to all other requirements for registration, an applicant for Congressional Medal of Honor plates, elected official plates or honorary consul plates must submit to DMV, an application for registration and all applicable fees, including any fee required for the custom plate requested. At the time of application, the applicant must:

(a) Be the registered owner of the vehicle listed on the application;

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(b) For Medal of Honor Recipients, meet the qualifications for issuance of Medal of Honor Plates under chapter 311, Oregon Laws, 2007 and this rule;

(c) For elected officials, meet the qualifications of ORS 805.220, and hold the office specified on the application. DMV may contact the Secretary of State to verify compliance with this subsection;

(d) For members of the Honorary Consular Corps, submit proof to DMV that the applicant is affiliated with, or represents a foreign consulate. Proof under this subsection must be a letter that clearly indicates the applicant is designated as an honorary consul. The letter must be from the designating nation and must be on official letterhead.

(2) Elected official plates are assigned to a specific vehicle and — if requested by the applicant — are issued in addition to the regular registration plates issued to that vehicle. The fee for an Elected official plate issued in addition to a regular series plate is the plate manufacturing fee established under ORS 803.570. Elected official plates may be transferred to another vehicle if:

(a) The vehicle to which the plates are being transferred is being registered in the name of the elected official that qualifies for that particular plate configuration; and

(b) The applicant submits a completed application to DMV that specifies the vehicle to which the elected official plates are to be assigned. There is no fee to transfer elected official plates.

(3) Plate Transfer. In addition to all other requirements for transferring registration plates, an applicant for a plate transfer must submit to DMV, a completed, signed application to transfer registration plates and all applicable fees. At the time of transfer, the applicant must be the registered owner of the vehicle listed on the application. There is no plate transfer fee for elected official plates.

(4) Plate Configurations. The following plate configurations are reserved as specified:

(a) For Congressional Medal of Honor recipients: The applicant may choose “MOH” or “CMH,” that will be followed by a single number of 1 thru 9;

(A) A total of 18 pair of Medal of Honor plates are reserved for issuance to qualified Congressional Medal of Honor recipients.

(B) Once a Congressional Medal of Honor plate configuration is issued, it is removed from the list of available plates and will not be issued again. For example, after “CMH 1” is issued, it is longer available. The next qualified applicant is issued the next available plate number in numeric order.

(b) For elected officials:

(A) Governor: “GOV1”;

(B) Secretary of State: “2”;

(C) State Treasurer: “3”;

(D) President of the Senate: “4”;

(E) President pro tempore of the Senate: “4A”;

(F) Speaker of the House of Representatives: “5”;

(G) Speaker pro tem of the House: “5A”;

(H) State Senators: “SEN” followed by the applicable Senate district number;

(I) State Representatives: “REP” followed by the applicable House district number;

(J) U.S. Senator: “USS” followed by a number; and

(K) U.S. Representative: “USR” followed by the House District number.

(c) For members of the Honorary Consular Corp: “ORE” followed by a number assigned by DMV.

(5) In addition to the elected official plate for Governor under subsection (3)(b) of this rule, DMV will issue regular series plates to the Governor upon request from the Governor’s office. The fee for a regular series plate issued under this section is the plate manufacturing fee established under ORS 803.570.

(6) A person who no longer qualifies for elected official plates or honorary consul plates must remove them from their vehicle at the end of their term of office, appointment, or at the time they no longer act in the official capacity of their position. When this occurs, the person may surrender the plates to DMV or retain the plates as a souvenir.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.200, 805.205, 805.220 & 2007 OL Ch. 311
Stats. Implemented: ORS 803.420, 803.530, 803.535, 805.220, 805.240, 805.242, 805.250 & 2007 OL Ch. 311

Hist.: MV 25-1988, f. & cert. ef. 10-3-88; MV 13-1992, f. & cert. ef. 10-16-92; DMV 23-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 15-2008, f. & cert. ef. 6-23-08

Rule Caption: Identity and Legal Presence Requirements for Driver Licenses and Permits and Identification Cards — Relating Provisions.

Adm. Order No.: DMV 16-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 4-1-2008

Rules Adopted: 735-062-0002, 735-062-0015, 735-062-0016, 735-062-0032, 735-062-0033, 735-062-0125, 735-062-0220

Rules Amended: 735-010-0008, 735-010-0100, 735-010-0130, 735-062-0005, 735-062-0010, 735-062-0020, 735-062-0030, 735-062-0090, 735-062-0110, 735-062-0120, 735-070-0000, 735-070-0004, 735-070-0010, 735-070-0020

Rules Repealed: 735-062-0021

Rules Ren. & Amend: 735-062-0000 to 735-062-0007

Subject: Oregon Laws 2008, Chapter 1, requires that an applicant for a driver license, driver permit, or identification card provide proof of a Social Security Number (SSN) or ineligibility for a SSN and proof of legal presence in the United States. These rules define the documents that may be used to prove a SSN (or ineligibility for a SSN), the documents that may be used to prove legal presence, and the documents that may be used to prove an applicant’s identity, date of birth, and address.

ORS 807.024 requires that a person applying for issuance, renewal or replacement of a driver license, driver permit or identification card submit to collection of biometric data by the Department of Transportation to establish the person’s identity. On July 1, 2008, the department will begin using facial recognition software to determine whether the biometric data for a person applying for any driver license, driver permit or identification card matches the biometric data already on file for that person. This rulemaking covers those sections of the legislation that become operative on July 1, 2008.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-010-0008

Definitions

As used in Division 10 rules, the following definitions apply:

(1) “Bulk distribution” means the distribution of surveys, marketing materials and solicitations, regardless of the medium used for distribution, including but not limited to:

(a) Material distributed to a targeted group of people to tell them about the suitability or quality of a product or service;

(b) Market research which involves contacting individuals;

(c) Nonprofit entities seeking donations of labor, products or money;

or

(d) Political material designed to encourage membership in a political organization, or to gain support for individuals seeking election to public office, or solicit money or labor for a political campaign or election.

(2) “Business entity” means a corporation, organization, firm, association, partnership, governmental agency, lawful commercial enterprise or other legal entity, other than an individual.

(3) “Business address” means the physical address of the place in which or from which a business entity operates.

(4) “Business name” is the name, including an abbreviation or acronym, by which a business is designated in official records and under which it conducts business.

(5) “Conducting business with DMV” includes any business with DMV that results in the creation of a customer record or change to an existing customer record.

(6) “County of use” means the county in which a vehicle is primarily used, when that county is:

(a) Other than the county of the owner’s residence or business address; and

(b) Other than the county of the vehicle address provided to DMV.

(7) “Customer number” means the distinguishing number assigned by DMV to each individual or business entity for which a customer record has been created.

(8) “Customer record” means the computer record created by DMV at the time an individual or business entity first does business with DMV.

(9) “Descriptive address” means information sufficient to identify the location of a residence or business entity if there is no actual street or rural route address, or to explain where a person lives if the person has no fixed residence.

(10) “Disseminator” means a person whose primary business function is the sale or distribution of information, including personal information in response to an individual record inquiry from a person who is authorized by DMV to receive the information under ORS 802.179.

(11) “DMV” means the Oregon Department of Transportation, Driver and Motor Vehicle Services Division.

(12) “Employment address” means the address of the public agency employing a police officer or eligible public employee as provided in ORS 802.250.

ADMINISTRATIVE RULES

(13) "Full legal name" means an individual's first name, middle name(s), and last or surname, without use of initials or nicknames.

(14) "Insurance support organization," as used in ORS 802.179(6), means a person who regularly engages in assembling or collecting information about a natural person for the primary purpose of providing the information to an insurer or insurance agent in connection with claims investigation activities, antifraud activities, underwriting or rating. "Insurance support organization" does not include an insurer, an insurance agent, a governmental institution, medical care institution or medical professional.

(15) "Legitimate business" means a lawful business enterprise operating in compliance with federal, state and local law.

(16) "Mailing address" means an address other than an actual residence or business address to which a person or business entity mail delivered, including a post office box or address of a service provider.

(17) "Motor vehicle record" means any record that pertains to a grant of driving privileges, an identification card, vehicle title or vehicle registration issued by DMV. "Motor vehicle record" does not mean a record pertaining to a manufactured structure.

(18) "Person" means an individual, an organization or an entity but does not include the State of Oregon or any agency thereof.

(19) "Personal information" means the following information that identifies an individual:

- (a) Driver license, driver permit or identification card number;
- (b) Name;
- (c) Address (excluding five-digit zip code); and
- (d) Telephone number.

(20) "Primary residence" means the state, jurisdiction or physical location where an individual lives, during any 12-month period, more than he or she lives elsewhere during that period.

(21) "Records list" means a list of driver or vehicle records compiled by selecting records that meet one or more general criteria, where the criteria is not specific to any one person or vehicle. Records lists would include such things as a list of vehicle records of a given manufacturer or a list of licensed drivers over the age of 65. A records list would not include records that were selected by a specific identifier, such as an individual's driver license number or a vehicle's registration plate number.

(22) "Registration address" means the vehicle address, if one is provided or if a vehicle address is not provided:

- (a) The vehicle owner's residence address if the owner is an individual; or
- (b) The vehicle owner's, business address if the owner is other than an individual. Some examples may include a business, school district, organization or church.

(23) "Residence address" means the actual address at which an individual resides more than he or she lives elsewhere during a 12-month period. If an individual resides an equal amount of time at two or more addresses, the individual shall determine which address is his or her residence address and use that as the residence address in conducting business with DMV. A residence address shall not be that of a service provider, except for purposes of titling or registering a vehicle owned by the service provider or obtaining an Oregon driver license, driver permit or identification card by the service provider.

(24) "Service Provider" means a business which facilitates the collection or delivery of mail, or businesses that provide vehicle registration services for another party. A mail service shall be considered to be a Service Provider.

(25) "Vehicle address" means the residence or business address where the vehicle is primarily housed, or from where the vehicle is primarily dispatched when different than the actual residence or business address of the owner.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179, 802.183, 803.370 & 807.050
Stats. Implemented: ORS 802.175 - 802.270, 803.220, 803.370, 807.050, 807.420, 807.560, 821.080 & 2008 OL Ch 1
Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 6-1999, f. & cert. ef. 12-17-99; DMV 10-2000, f. & cert. ef. 9-21-00; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-010-0100

Purpose

An applicant for a driver license, driver permit or vehicle registration is required by ORS 803.370 and 807.050 to provide full legal name and actual residence address to DMV. DMV has the authority to accept something other than an actual residence or post office address, if the applicant does not have one. This may occur if, for example, the applicant is homeless or travels continuously. The purpose of OAR 735-010-0110 through 735-010-0170 is to:

- (1) Specify how a customer establishes or changes a name;
- (2) Establish a consistent means for determining full legal name for individuals and business name on existing DMV records;
- (3) Define the different types of addresses and establish when DMV will require or accept each type of address; and

(4) Establish how the name and address information on the customer record will be used in corresponding with customers.

Stat. Auth.: ORS 184.616, 184.619, 803.370 & 807.050
Stats. Implemented: ORS 802.200, 802.250, 802.260, 803.220, 803.370, 807.050, 807.420, 807.560, 821.080 & 2008 OL Ch 1
Hist.: DMV 6-1999, f. & cert. ef. 12-17-99; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-010-0130

Establishment and Use of Full Legal Name by an Individual

All of the following apply to establishment and use of a full legal name by an individual:

(1) An applicant for an Oregon driver license, driver permit or identification card, shall establish his or her full legal name as supported by one or more documents proving identity and date of birth required under OAR 735-062-0020.

(2) When conducting any business with DMV, including but not limited to obtaining driving privileges, an identification card, vehicle title and vehicle registration, an individual shall use only his/her full legal name.

(3) If an individual has not established a full legal name as provided in section (1) of this rule, DMV will use the name on his or her customer record as his or her name for vehicle title and registration purposes. An individual who is shown on any application for title as provided in ORS 803.050, any application for salvage title as provided under 803.140 or any transitional ownership record as defined in 801.562, shall use his/her full legal name.

(4) An individual shall use the same name in conducting all business with DMV. The individual must also provide the DMV-assigned customer number shown on the driver license, driver permit or identification card, if known.

(5) An individual's full legal name shall not include a title or honorific such as, but not limited to, Mr., Mrs., Reverend or Doctor.

Stat. Auth.: ORS 184.616, 184.619 & 802.010
Stats. Implemented: ORS 801.562, 803.015, 803.050, 803.140, 803.220, 803.370, 807.050, 807.420, 807.560, 809.135, 821.080 & 2008 OL Ch 1
Hist.: DMV 6-1999, f. & cert. ef. 12-17-99; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0002

Definitions

As used in this division the following definitions apply:

(1) "Biometric data" means measurements of the physical characteristics of a person's face that can be used to authenticate the identity of the person.

(2) "DMV" means the Oregon Department of Transportation, Driver and Motor Vehicle Services Division.

(3) "Legal presence" or "legal presence in the United States" means that a person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States under federal immigration laws.

(4) "SSA" means the Social Security Administration.

(5) "SSN" means Social Security Number.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050 & 2008 OL Ch. 1
Stats. Implemented: ORS 801.163, 802.200, 807.024, 807.050 & 2008 OL Ch. 1
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0005

SSN — Requirements for Proof of a Verifiable SSN or Ineligibility for a SSN and SSN Verification

(1) Except as provided in OAR 735-062-0032 and 732-062-0033, when a person who is eligible for a SSN applies for any original, renewal or replacement driver license, driver permit or identification card, the person must provide his or her SSN on the application form and, unless DMV previously has verified the SSN as provided in section (3) of this rule, the person must provide proof that the SSN is the one assigned to the person by the SSA. Proof that the SSN is the one assigned to the person by the SSA may include, but is not limited to, one or more of the following documents:

- (a) Social Security Card or other SSA documentation;
- (b) Income tax form filed with the Internal Revenue Service or a state tax agency;
- (c) Employment document;
- (d) Military document (DD214); or
- (e) Any document containing full social security number acceptable as proof of legal presence or identity and date of birth as listed in OAR 735-062-0015 or 735-062-0020.

(2) Except as provided in OAR 735-062-0032 and 735-062-0033, a person who applies for any original, renewal or replacement non-commercial driver license or driver permit or identification card and claims to be ineligible for a SSN must provide proof that he or she is not eligible for a SSN. A person may prove his or her ineligibility for a SSN by presenting documents issued by the SSA, the Department of Homeland Security or other federal agencies or federal courts, which demonstrate that the person is not eligible to be assigned a SSN by the SSA. The person must also certify that he or she is ineligible for a SSN.

ADMINISTRATIVE RULES

(3) When an applicant provides a SSN and the proof required by section (1) of this rule, DMV will submit the SSN to the SSA for verification, unless the applicant is a citizen or permanent legal resident of the United States whose SSN previously has been verified under this rule. An applicant's SSN is verified when SSA notifies DMV that the applicant's SSN, name and date of birth are confirmed by SSA's records.

(4) Except as provided in OAR 735-062-0032 and 735-062-0033, DMV will not issue, renew or replace any driver license, driver permit or identification card, unless:

(a) The applicant has proved his or her legal presence in the United States as provided in OAR 735-062-0015, and DMV has verified the applicant's SSN as provided in section (3) of this rule; or

(b) If the applicant claims to be ineligible for a SSN, the applicant has proved his or her ineligibility for a SSN as provided in section (2) of this rule and his or her legal presence in the United States as provided in OAR 735-062-0015.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050 & 2008 OL Ch. 1

Stats. Implemented: ORS 802.200, 807.050 & 2008 OL Ch. 1

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1995, f. & cert. ef. 11-15-95; DMV 19-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0007

Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040 and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

(A) "Mother" means the biological or adoptive mother of the applicant;

(B) "Father" means the biological or adoptive father of the applicant; and

(C) "Legal guardian" means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Provide proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(d) Provide proof of legal presence as provided in OAR 735-062-0015;

(e) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016;

(f) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020;

(g) Provide proof of the person's residence address as provided in OAR 735-062-0030;

(h) Provide proof, as provided in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(i) Surrender all driver permits and driver licenses in the person's possession that have been issued by:

(A) Another state;

(B) A Canadian province or territory; or

(C) A U.S. territory.

(j) In addition to all requirements in subsections (a) through (i) of this section, a person who holds a commercial driver license from another jurisdiction must satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200.

(2) A person is not eligible for driving privileges under ORS 807.060(4) or (5) and DMV will not issue or renew driving privileges or replace a driver license or driver permit if on an application for driving privileges or a replacement license or permit a person:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?" and the person is unable to pass a DMV vision screening;

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?";

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(3) A person who is denied issuance or renewal of driving privileges or replacement of a driver license or driver permit under section (2) of this rule will be allowed to establish or reestablish eligibility by passing DMV examinations under ORS 807.070, by getting a determination of eligibility from the Medical Determination Officer under ORS 807.090 or both, as determined by DMV. The requirement may be waived if DMV determines the application was completed in error and the person is eligible for driving privileges.

(4) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem

Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(6) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(7) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

(8) A driver license of an applicant with a February 29 birth date expires:

(a) On February 29 if the expiration year is a leap year; or

(b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the license or permit and mail it to the address provided by the applicant at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040, 807.050, 807.060, 807.120, 809.310 & 2008 OL Ch 1

Stats. Implemented: ORS 807.040, 807.060, 807.066 & 2008 OL Ch 1

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; Renumbered from 735-062-0000, DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0010

Identification Cards

(1) Pursuant to ORS 807.400 and as provided in this rule, DMV will issue an identification card to a person who does not have a valid driver license.

(2) A person applying for an identification card must:

(a) Satisfy all identification card requirements set forth in ORS 807.400 and 807.410, except as described under section (7) of this rule;

(b) Provide proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(c) Provide proof of legal presence as provided in OAR 735-062-0015;

(d) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016.

(e) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020; and

(f) Provide proof of the person's residence address as provided in OAR 735-016-0070 and 735-062-0030.

(3) Identification cards issued to persons for whom DMV has created an Oregon driving record will reflect the same number as that on the existing record.

(4) An applicant in possession of a driver license issued by another jurisdiction must surrender that license to DMV before an identification card will be issued. The person must provide a statement to DMV if the person's license is lost, destroyed or the person no longer has the license in his or her possession, and must agree that the license will be surrendered to DMV if found.

(5) Applicants for an identification card must personally apply at a DMV office to receive an identification card.

(6) All identification cards must include a photograph of the cardholder.

(7) DMV will waive the fee requirements set forth in ORS 807.410 for those persons applying for an identification card when:

(a) The person voluntarily surrenders an Oregon license or driver permit to DMV based upon the person's recognition that the person is no longer competent to drive; or

(b) The person's driving privileges are suspended under ORS 809.419(1) and the person voluntarily surrenders the person's license or driver permit to DMV.

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(8) An identification card of an applicant with a February 29 birth date expires:

- (a) On February 29 if the expiration year is a leap year; or
- (b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the identification card and mail it to the address provided by the applicant at the time of application.

(10) DMV may renew an identification card as provided in OAR 735-062-0090 or may do so using a previous photograph only as provided 735-062-0125.

(11) DMV may replace an identification card as provided in OAR 735-062-0110 or may do so using a previous photograph only as provided 735-062-0125.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040, 807.050, 807.400 & 2008 OL Ch 1
Stats. Implemented: ORS 807.400 & 2008 OL Ch 1
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0003; MV 19-1990, f. 12-17-90, cert. ef. 1-1-91; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0015

Proof of Legal Presence

(1) Except as provided in OAR 735-062-0032 and 735-062-0033, a person who applies for any original, renewal or replacement driver permit, driver license, or identification card must provide valid documentary proof that the person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States in accordance with federal immigration laws. The documents provided must be either original or certified copies.

(2) If the applicant's full legal name is different from the name in the document(s) submitted to prove legal presence pursuant to section (1) of this rule, the applicant must provide valid documentary proof that the applicant's name has been legally changed and that the applicant is the person identified in the document(s) submitted to prove the applicant's legal presence. Documentary proof of an applicant's legal name change may include, but is not limited to: a marriage certificate, a divorce decree, a certificate of registered domestic partnership, a judgment of dissolution or annulment of marriage or domestic partnership, an adoption decree, and a court decree, order or judgment legally changing the applicant's name.

(3) Documents acceptable as proof of U.S. citizenship include, but are not limited to:

(a) A birth certificate issued by a U.S. Territorial government or the government of a state or political subdivision of a state of the United States. DMV will not accept a hospital-issued birth certificate, hospital card or birth registration or baptismal certificate.

(b) U.S. Consular Report of Birth Abroad (FS-240).

(c) U.S. government-issued Certification of Report of Birth (DS-1350 or FS-545).

(d) Request for Verification of Birth (DD372).

(e) United States passport, not expired more than five years.

(f) United States passport card, not expired more than five years.

(g) U.S. territory passport, not expired more than five years.

(h) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation, if DMV determines:

(A) The procedures used in issuing the card are sufficient to prove that a member is legally present in the United States; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(i) Certificate of Citizenship (N560 and N561).

(j) Certificate of Naturalization (N550, N570 and N578).

(4) Documents acceptable as proof of permanent legal residence in the U.S. include, but are not limited to: Resident Alien card; Permanent Resident card (I-551); or a Permit to Re-Enter (I-327).

(5) Documents acceptable as proof that a person who is not a citizen or permanent legal resident of the United States is legally present in the United States include, but are not limited to:

(a) Valid foreign passport, not expired, with appropriate Arrival/Departure Record (I-94 or CBP I-94A) or a valid I-797 Notice of Action issued by the Department of Homeland Security or Custom and Border Protection.

(b) Federated States of Micronesia (FSM) passport (containing I-94), not expired more than five years.

(c) U.S. Department of Homeland Security issued documents, not expired, including:

(A) Temporary Resident ID card (I-688);

(B) Employment Authorization card (I-688A, I-688B and I-766); or

(C) Refugee Travel Document Form I-571.

(6) An applicant who must obtain a document in order to provide proof of legal presence may apply for an applicant temporary driver permit as described in OAR 735-062-0032 that will provide driving privileges for

a limited time or an applicant temporary identification card as described in OAR 735-062-0033.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 2008 OL Ch 1
Stats. Implemented: 2008 OL Ch 1
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0016

Requirements for Establishing Identity Under ORS 807.024 and Consequences of Applicant's Failure to Establish Identity

(1) Except as provided in OAR 735-062-0120 and OAR 735-062-0125, an applicant for an original, renewal or replacement driver license, driver permit or identification card must submit to the collection of biometric data, as provided in ORS 807.024, for the purpose of establishing identity.

(2) Except as provided in OAR 735-062-0120 and 735-062-0125, if an applicant's identity is not established by the biometric data submitted pursuant to subsection (1) of this rule, the applicant must provide documentation or other evidence sufficient to establish the applicant's identity to the satisfaction of DMV. The documents or other evidence may include, but are not limited to, one or more of the following:

(a) Documents listed in OAR 735-062-0020 that provide proof of the applicant's identity and date of birth to the satisfaction of DMV.

(b) The applicant's SSN and proof and verification of the SSN as provided in OAR 735-062-0005.

(c) A letter from a treating physician that identifies the person and states a medical reason for the person's change in appearance.

(d) A document or letter from a law enforcement agency verifying identity.

(e) A court document verifying identity.

(3) Except as provided in OAR 735-062-0120 and 735-062-0125, DMV will not issue a driver license, driver permit or identification card, if the applicant's identity is not established under this rule.

(4) Pursuant to ORS 809.310(3) and 735-070-0004, DMV will suspend an applicant's driving privileges or identification card and the person's right to apply for driving privileges and an identification card, if the person fails to establish his or her identity as required by this rule and the failure to establish identity is the result of the applicant's committing any of the acts identified in ORS 809.310(3) (a) through (h).

(5) Pursuant to ORS 809.310(1), 807.400(14), and OAR 735-070-0004, DMV will cancel a driver license, driver permit or identification card issued to an applicant who fails to establish his or her identity as required by this rule when applying for the license, permit or identification card.

(6) Pursuant to ORS 809.310(2), 807.400(14), and OAR 735-070-0004, DMV will cancel a driver license, driver permit or identification card issued to an applicant who fails to establish his or her identity as required by this rule when applying for the license, permit or identification card, and the failure to establish identity is the result of the applicant's providing false information to DMV.

(7) If, based on the identification procedures required under section (1) or section (2) of this rule, DMV determines that an applicant has used different names to identify himself or herself in different applications submitted to DMV and the different names are not the result of the applicant's having legally changed his or her name, DMV may take the actions authorized by ORS 809.135.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.024, OL 2008, Ch 1
Stats. Implemented: ORS 807.024, 807.400, 809.135, 809.310, 807.400, 809.411, OL 2008, Ch 1
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0020

Proof of Identity and Date of Birth Requirements

(1) A person who applies for an original, renewal or replacement driver permit, driver license, or identification card must provide valid documentary proof of the person's identity and date of birth prior to the issuance of such driver permit, driver license, or identification card. Documents must be original or certified copies.

(2) If the applicant's full legal name is different from the name on the document(s) submitted to provide proof of identity and date of birth pursuant to section (1) of this rule, the applicant must provide valid documentary proof that the applicant's name has been legally changed and that the applicant is the person identified in the documents submitted to prove the applicant's identity and date of birth. Documentary proof of an applicant's legal name change may include, but is not limited to: a marriage certificate, a divorce decree, a certificate of registered domestic partnership, a judgment of dissolution or annulment of marriage or domestic partnership, an adoption decree, and a court decree, order or judgment legally changing the applicant's name.

(3) Documents acceptable as proof of identity and date of birth include, but are not limited to:

(a) Any document that provides proof of legal presence as provided in OAR 735-062-0015.

(b) U.S. Military documents including:

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(A) Military or Armed Forces ID card;
(B) Military Common Access Card; or
(C) U.S. Uniform Services ID and Privileges card (DD1173 and DD1173-1).

(c) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation if DMV determines:

(A) The procedures used in issuing the card are sufficient to prove a member's identity and date of birth; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(d) Canadian Government Issued Birth Certificate;

(e) Out-of-state, District of Columbia, U.S. Territorial government or Canadian driver license, instruction permit or identification card, that contains the applicant's photograph, not expired more than one year unless hole-punched or marked "Not Valid as ID."

(f) Oregon driver license, instruction permit, or identification card, not expired more than one year. For the purposes of this subsection, DMV will not accept a driver license that was issued without a photograph.

(g) U.S. Department of State driver license or Non-driver ID card not expired more than one year.

(h) Oregon Concealed Weapon Permit/Concealed Handgun License, not expired more than one year.

(i) A letter verifying identity provided by an Oregon County Community Corrections agency if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(j) A letter verifying identity provided by the U.S. Pretrial Services if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(k) A letter verifying identity provided by the Oregon Youth Authority Agency if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(l) A letter verifying identity provided by a U.S. District Court Probation Office if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(m) Oregon Department of Correction Release Identification card, issued after April 30, 2005.

(4) DMV will not accept a document as proof of identity and date of birth if DMV has reason to believe the document is not valid. DMV may request an applicant for a driver permit, driver license, or identification card to present additional documentary proof of identity and date of birth if the document presented does not establish the applicant's identity or date of birth to the satisfaction of DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050, 807.150 & 807.400

Stats. Implemented: ORS 807.050, 807.062, 807.150, 807.160, 807.220, 807.230 & 807.280
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0016;
MV 6-1990, f. & cert. ef. 4-2-90; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 7-2001, f. & cert. ef. 3-7-01; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 8-2005, f. & cert. ef. 2-16-05; DMV 9-2006, f. & cert. ef. 8-25-06; DMV 2-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0030

Proof of Residence Address

(1) DMV requires all applicants for an original driver permit, driver license, or identification card to present at least one document showing the applicant's name and current residence address. Current residence address is the address where the applicant actually lives, and DMV will include this address on the permit, license, or identification card. Acceptable documents include any of the items listed in section (3) of this rule.

(2) DMV requires all applicants who apply for a renewal or replacement driver permit, driver license, or identification card to present at least one document showing the applicant's current residence address if the applicant's address has changed since the last time the driver permit, driver license or identification card was issued or renewed. Acceptable documents include any of the items listed in section (3) of this rule.

(3) Proof of residence address includes any of the following documents that show the applicant's current residence address:

(a) Any proof of identity and date of birth document listed in OAR 735-062-0020 containing the applicant's current residence address.

(b) Mortgage documents.

(c) A verbal statement from the parent, step-parent or guardian of an applicant attesting to the applicant's residence address. The parent, step-parent or guardian must reside at the same address as the applicant. In addition, the parent, step-parent or guardian must present one acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.

(d) A verbal statement of the applicant's spouse or partner in a domestic partnership. The spouse or partner must reside at the same address as the applicant. In addition, the spouse or partner must accompany the applicant and present one acceptable proof of residence address document as set forth in this rule.

(e) Utility hook-up order or account statement issued by the utility company.

(f) Payment booklet.

(g) Mail, sent to the current resident address, which is dated within 60 days of the application for the license, permit or identification card. DMV will accept mail from the following sources:

(A) U.S. Treasury;

(B) Social Security Administration;

(C) State or Federal Revenue Department;

(D) Government agencies. (Mail received from DMV containing only a residence address);

(E) Utility companies;

(F) Insurance companies; and

(G) Originators of out-of-state clearance letter.

(h) Oregon vehicle title or registration documents belonging to the primary owner listed and may only contain the owner's residence address.

(i) Oregon manufactured structure ownership documents.

(j) Oregon voter notification card.

(k) Selective Service card.

(l) Medical or health benefits card.

(m) Educational institution transcript forms or other school documents showing enrollment for the current school year.

(n) An unexpired professional license issued by an agency in the United States.

(o) Form DS2019, Certificate of Eligibility for Exchange Visitor (J-1) Status.

(p) Letter from the Oregon State Hospital, Oregon Veteran Rehabilitation Center, a homeless shelter, a transitional service provider, nursing home, assisted/independent living care facility/home, adult care service provider/skill nursing facility, or halfway/group home certifying the applicant's residence address, approved by DMV.

(4) If the applicant does not have a residence address, DMV may accept a descriptive address with a mailing address. DMV may require the applicant to provide proof that no residence address has been assigned to the property. Such proof may include, but is not limited to, a statement from the U.S. Postal Service or from the Assessor's office in the county in which the property is located.

(5) An applicant who is homeless may use a descriptive address of the location where he/she actually resides, e.g., "under the west end of Burnside Bridge." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant must also provide a mailing address.

(6) An applicant who travels continuously may use a residence address of "continuous traveler." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the use of "continuous traveler," the applicant must also provide a mailing address.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050, 807.150 & 807.400

Stats. Implemented: ORS 807.110, 807.160 & 807.400

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0017;
DMV 2-1995, f. & cert. ef. 2-10-95; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 8-2005, f. & cert. ef. 2-16-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 9-2006, f. & cert. ef. 8-25-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 5-2008, f. & cert. ef. 2-4-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0032

Applicant Temporary Driver Permit Issued to Applicants Unable to Provide SSN and Legal Presence Documentation

(1) When an applicant for a driver license or driver permit is unable to provide the documentation required by OAR 735-062-0005 to prove a verifiable SSN or ineligibility for a SSN, or is unable to provide the documentation required by 735-062-0015 to prove legal presence, DMV may issue an applicant temporary driver permit to the applicant if:

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(a) The applicant is otherwise eligible and complied with all other requirements for a driver license or driver permit, including the requirements for proof of identity and date-of-birth under OAR 735-062-0020;

(b) The applicant certifies that to the best of his or her knowledge, the applicant is legally present in the United States; and

(c) DMV has not issued an applicant temporary driver permit to the applicant under this rule before, and the applicant so certifies.

(2) A holder of an applicant temporary driver permit issued under this rule must have the permit on his or her person while operating a motor vehicle. The applicant temporary driver permit will indicate the class of license granted and any endorsements granted and will list any restrictions placed on the driving privileges.

(3) Except as provided in sections (4) and (5) of this rule, an applicant temporary driver permit issued under this rule is valid for 90 days, or until the applicant is able to provide to DMV the documentation required by OAR 735-062-0005 and 735-062-0015 for issuance of a driver license or driver permit, whichever is sooner.

(4) DMV may extend the period of an applicant temporary driver permit's validity up to 60 days, but no more than one time, and only if:

(a) The applicant applies for an extension;

(b) The applicant provides evidence of efforts to obtain the documentation required by OAR 735-062-0005 and 735-062-0015 for issuance of a driver license or permit; and

(c) DMV determines that sufficient cause exists for the extension.

(5) An applicant temporary driver permit issued under this rule automatically becomes invalid if the applicant's driver license or permit is issued or is refused for good cause. If and when the applicant's driver license or permit is issued or refused for good cause, the applicant must surrender to DMV his or her applicant temporary driver permit.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.310

Stats. Implemented: 807.310 & 2008 OL Ch 1

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0033

Applicant Temporary Identification Cards Issued to Applicants Unable to Provide SSN and Legal Presence Documentation

(1) When an applicant for an identification card is unable to provide the documentation required by OAR 735-062-0005 to prove a verifiable SSN, or ineligibility for a SSN, or is unable to provide the documentation required by 735-062-0015 to prove legal presence, DMV may issue an applicant temporary identification card to the applicant, if:

(a) The applicant is otherwise eligible and has complied with all other requirements for an identification card, including the requirements for proof of identity and date-of-birth under OAR 735-062-0020;

(b) The applicant certifies that, to the best of his or her knowledge, the applicant is legally present in the United States; and

(c) DMV has not issued an applicant temporary identification card to the applicant under this rule before, and the applicant so certifies.

(2) Except as provided in section (3) of this rule, an applicant temporary identification card issued under this rule is valid for 90 days or until the applicant is able to provide to DMV the documentation required by OAR 735-062-0005 and 735-062-0015 for issuance of an identification card, whichever is sooner.

(3) DMV may extend the period of the applicant temporary identification card's validity up to 60 days, but no more than one time, and only if:

(a) The applicant applies for an extension;

(b) The applicant provides evidence of efforts to obtain the documentation required by OAR 735-062-0005 and 735-062-0015 for issuance of an identification card; and

(c) DMV determines that sufficient cause exists for the extension.

(4) An applicant temporary identification card issued under this rule automatically becomes invalid if the applicant's identification card is issued or is refused for good cause. If and when the applicant's identification card is issued or is refused for good cause, the applicant must surrender to DMV his or her applicant temporary identification card.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.405

Stats. Implemented: 807.405 & 2008 OL Ch 1

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0090

Renewal Driver Licenses and Identification Cards

(1) DMV will renew the driver license of a person satisfying the requirements set forth in ORS 807.150.

(2) An applicant for the renewal of a driver license or identification card must:

(a) Provide proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005(2);

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and 735-062-0016; and

(d) Provide proof of identity and date of birth as provided in OAR 735-062-0020.

(3) An applicant for the renewal of a driver license or identification card that includes a change of residence address must present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. (Current residence address is the residence address to be included on the license or identification card to be issued.)

(4) DMV may renew an unexpired driver license or identification card up to four months prior to the expiration date.

(5) Notwithstanding section (4) of this rule, DMV will renew an unexpired driver license or identification card of a person who is a member of the Oregon National Guard or a military reservist being deployed, up to 14 months prior to the expiration date on the license or identification card.

(6) If a driver license has been expired more than one year, the applicant must re-apply for an original driver license and meet the requirements set forth in OAR 735-062-0007.

(7) An applicant for a renewal of a commercial driver license with a hazardous materials endorsement must retake and pass the hazardous materials knowledge test and meet the requirements set forth in OAR 735-062-0190 to retain the hazardous materials endorsement on the commercial driver license.

(8) An applicant for a renewal of a commercial driver license must meet the requirements set forth in OAR 735-063-0065.

(9) Before processing a driver license renewal, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a commercial driver license (CDL) renewal, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in any other jurisdiction.

(10) If the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction, the applicant may not renew an Oregon driver license until the applicant submits a clearance letter that complies with OAR 735-062-0160 and shows the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(11) Notwithstanding section (10) of this rule, DMV will renew the driving privileges of an applicant whose driving privileges are suspended, revoked, canceled or otherwise not valid in another jurisdiction if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

(12) DMV will not renew an Oregon driver license or permit if the applicant has a current, valid Oregon identification card. To become eligible, the person must surrender the Oregon identification card before DMV will renew the Oregon driver license or permit. If the person's identification card is lost or the person no longer has the identification card in his or her possession, the person must provide a statement attesting to this fact.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 807.040 & 2008 OL Ch 1

Stats. Implemented: ORS 802.012, 802.540, 807.040 - 807.060, 807.100, 807.15, 807.400 & 2008 OL Ch 1

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0009; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 4-2007, f. 5-24-07, cert. ef. 6-5-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 7-2008(Temp), f. & cert. ef. 2-22-08 thru 8-19-08; DMV 10-2008, f. & cert. ef. 4-24-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0110

Replacement Driver Permits, Driver Licenses, and Identification Cards

(1) DMV will issue a replacement driver permit, driver license or identification card for one of the reasons listed in section (2) of this rule if the applicant meets the requirements set forth in ORS 807.160 and this rule and the person is eligible for the driver license, driver permit or identification card.

(2) DMV may issue a replacement driver license, driver permit or identification card when the applicant:

(a) Furnishes proof satisfactory to the department of the loss, destruction or mutilation of the person's driver license, driver permit or identification card.

(b) Changes residence address from the address noted on the person's driver license, driver permit or identification card.

(c) Is an officer or eligible employee who has requested, in accordance with ORS 802.250, that department records show the address of the person's employer.

(d) Changes names from the name noted on the person's driver license, driver permit or identification card.

(e) Is applying for or is required to add or remove a restriction on the person's driver license or driver permit.

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(f) Is applying for or is required to add or remove an endorsement other than a motorcycle or farm endorsement on the person's driver license or driver permit.

(g) Furnishes proof satisfactory to the department or the department determines that the department made an error when issuing the person's driver license, driver permit or identification card.

(h) Surrenders the person's driver license that was issued without a photograph under OAR 735-062-0120 and requests a driver license with a photograph.

(i) Surrenders a driver license, driver permit or identification card to the department following a suspension and the person becomes eligible for driving privileges or an identification card.

(j) Has a driver license, driver permit or identification card that was confiscated by a police officer, a court or other agency and the person is eligible for a driver license, driver permit or an identification card.

(k) Requests to change any physical description, notation, photograph or signature on the driver license, driver permit, or identification card or to add or delete an anatomical donor designation.

(l) Surrendered an Oregon driver license or driver permit to the driver licensing agency of another state or jurisdiction and the person again becomes domiciled in or a resident of Oregon, as long as the person remains eligible for driving privileges and the driver license or permit has not been expired for longer than one year. This subsection does not apply if the person is requesting a commercial driver license.

(m) Has a reason satisfactory to DMV to be issued a driver license, driver permit or identification card with a different distinguishing number than the one being replaced.

(n) Requests a downgrade from one license class to another (e.g., a Commercial Driver License to a non-commercial Class C driver license).

(o) Requests restoration of a Commercial Driver License following a suspension of the Commercial Driver License or a downgrade to non-commercial driving privileges and the person is eligible for commercial driving privileges.

(p) Requests to correct information on the driver license, driver permit or identification card that was provided to DMV in error.

(3) An applicant for a replacement driver license, driver permit, or identification card must:

(a) Provide proof of a verifiable SSN, or proof that the person is not eligible for a SSN, as provided in OAR 735-062-0005(2);

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016; and

(d) Provide proof of identity and date of birth as provided in OAR 735-062-0020.

(4) An applicant for a replacement driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current residence address is the address where the person actually lives and DMV will include that address on the license, permit, or identification card issued.

(5) An applicant for a replacement driver license, driver permit, or identification card must surrender the license, driver permit or identification card replaced to DMV, if possible.

(6) Before issuing a replacement driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a replacement commercial driver license or commercial driver permit, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(7) If the applicant's driving privileges are suspended, revoked, canceled or otherwise invalid in any other jurisdiction, DMV will not issue a replacement driver license or driver permit until the applicant submits a clearance letter that complies with OAR 735-062-0160 or a DMV inquiry to the NDR/PDPS or CDLIS, or both, shows that the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(8) Notwithstanding section (7) of this rule, DMV will issue a replacement license or driver permit to an applicant whose driving privileges are suspended, revoked, canceled or otherwise invalid if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.160 & 2008 OL Ch 1
Stats. Implemented: ORS 807.160, 807.220, 807.230, 807.280, 807.400 & 2008 OL Ch 1
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 1-18-05; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0120

Standards for Issuance of Driver's Licenses Without a Photograph

(1) DMV may, upon receipt of a written request, and for good cause, provide for issuance of a valid driver license without a photograph to any person qualified to hold an Oregon driver license:

(a) Who is a member of a religious denomination that prohibits photographing of its members because it is contrary to its religious tenets; or

(b) Who has severe facial disfigurement.

(2) In addition to satisfying the requirements of section (1), an applicant for issuance of a driver license under this rule must:

(a) Provide proof of verifiable SSN, or proof of ineligibility for a SSN, as provided in OAR 735-062-0005(2);

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Provide proof of identity and date of birth as provided in OAR 735-062-0020; and

(d) Provide proof of residence address as provided in OAR 735-062-0030(1).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.110 & 2008 OL Ch 1

Stats. Implemented: ORS 807.110 & 2008 OL Ch 1

Hist.: MV 80, f. & ef. 10-4-77; MV 15-1986, f. 9-16-86, ef. 10-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0038; DMV 21-2001, f. & cert. ef. 10-18-01; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0125

Standards for Issuance of a Renewal or Replacement Driver License or Identification Card Containing a Previous Photograph

(1) DMV may renew or replace a person's driver license or identification card by issuing a renewal or replacement license or identification card containing a photograph of the person already on file with DMV, if the applicant:

(a) Is an Oregon resident as described in OAR 735-016-0040 and previously has proven that he or she is a citizen or permanent resident of the United States as required by 735-062-0015;

(b) Previously has provided proof of his or her Social Security number, and the number has been verified with the Social Security Administration as required by OAR 735-062-0005;

(c) Submits a written statement to DMV establishing good cause why he or she is not able to appear and apply for the renewal or replacement license or identification card at a DMV field office;

(d) Provides proof that he or she is, in fact, the person to whom the license or identification card to be renewed or replaced was issued; and

(e) Meets all other qualifications for the license or identification card sought and provides proof that he or she is domiciled in Oregon as described in OAR 735-016-0040.

(2) Circumstances constituting "good cause" for purposes of subsection (1)(c) of this rule include, but are not limited to, the following:

(a) The applicant is temporarily in another jurisdiction or country for business reasons, employment or education, will be returning to Oregon, and continues to satisfy Oregon's residency requirements.

(b) The applicant is traveling outside of Oregon and the applicant's Oregon driver license or identification card is lost, stolen or mutilated;

(c) The applicant is traveling outside of Oregon and the applicant's Oregon driver license or identification card has expired or will expire before the person returns to Oregon; or

(d) The applicant has a medical condition or health problems that prevent him or her from applying for a renewal or replacement license or identification card at a DMV field office and submits to DMV proof of the medical condition or health problems from the applicant's licensed treating physician.

(3) Notwithstanding section (1) of this rule, DMV may issue a renewal or replacement license or identification card containing a photograph of the applicant already on file with DMV, if the applicant is an Oregon licensed driver or identification card holder serving on active duty in the United States Armed Forces outside of Oregon who provides a copy of his or her:

(a) Most current Leave Earning Statement showing Oregon as his or her home on record;

(b) Federally-issued active duty Military identification card; and

(c) Social Security number to be verified with the Social Security Administration, if not previously provided.

(4) A spouse, partner in a domestic relationship or dependent of a military person on active duty in the United States Armed Forces outside of Oregon who qualifies under section (3) of this rule, who holds an Oregon driver license or identification card may qualify for a driver license or identification card using the previous photograph, if the spouse or dependent provides a copy of the following:

(a) The military member's most current Leave Earning Statement showing Oregon as his or her home on record;

(b) The military member's active duty Military identification card;

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(c) The spouse, partner or dependent's Military identification card; and

(d) The spouse, partner or dependent's Social Security number to be verified with the Social Security Administration, if not previously provided.

(5) DMV will not replace or renew a driver license or identification card under this rule, if the applicant's most recent photograph on file with DMV is more than nine years and two months old.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 2008 OL Ch 1

Stats. Implemented: ORS 807.400 & 2008 OL Ch 1

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-062-0220

Additional Fee for Collection and Verification of Biometric Data

(1) As provided in ORS 807.375, a \$3 fee will be added to the motorcycle and farm endorsement fee imposed under 807.370 if that endorsement is not added during the issuance or renewal of other privileges.

(2) The additional fee, along with fee increases in statute to begin July 1, 2008, covers the cost of purchasing equipment and establishing and maintaining a database used for collecting and verifying biometric data.

Stat. Auth.: ORS 184.616, ORS 184.619, 802.010, 807.375

Stat. Imp.: ORS 807.024, 807.370 and 807.410

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-070-0000

Driver License Cancellations — Not Entitled to Driving Privileges

(1) DMV will, under the provisions of ORS 807.350 and 809.310(1), cancel a person's driving privileges if DMV determines the person is not entitled to or no longer qualified for a driver permit or driver license.

(2) A person is not entitled to a driver permit or driver license if the person does not meet the eligibility requirements of ORS 807.024, 807.040, 807.060, 807.062, 807.065, 807.066 and 807.070.

(3) A person is not entitled to a driver permit or driver license if the person's driving privileges are suspended or revoked in any jurisdiction.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 802.540, 807.040, 807.050, 807.060, 807.070, 807.120, 807.150, 807.400 & 809.310

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0061; MV 11-1988(Temp), f. & cert. ef. 4-1-88; MV 19-1988, f. & cert. ef. 6-1-88; MV 8-1989, f. & cert. ef. 2-1-89; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-070-0004

Cancellation and Suspension Actions Under ORS 809.310 and 809.320

(1) Pursuant to ORS 809.310(1) and (2) and 807.400(14), DMV will cancel any driver license, driver permit or identification card when DMV determines that it was issued on the basis of false information given to DMV or determines that the person is not entitled to driving privileges or the identification card. The cancellation action may be taken in addition to the suspension actions authorized by section (3) of this rule.

(2) When DMV cancels a person's driver license, driver permit or identification card under section (1) of this rule, DMV may cancel any other driver license, driver permit or identification card issued to the person to which the person is not entitled or which was issued on the basis of false information given to DMV.

(3) When DMV suspends a person's driving privileges or identification card pursuant to ORS 809.411(9) because the person has been convicted of any of the acts identified in 809.310(3) (a) through (h), or because DMV has determined the person knowingly committed any of the acts identified in 809.310(3)(a) through (h), DMV will suspend any other identification card or driving privileges issued to the person and the person's right to apply for driving privileges and an identification card.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stat. Imp.: ORS 809.310 & 809.320

Hist.: MV 8-1989, f. & cert. ef. 2-1-89; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-070-0010

Reinstatement Following Cancellation or Suspension Under ORS 807.220, 807.230, 807.350, 809.310 and 809.320

(1) DMV will reissue a driver permit, driver license or identification card to a person whose driving privileges or identification card is canceled under ORS 809.310(1) because the person is not entitled only if the person corrects the condition that caused the cancellation and otherwise meets all requirements for driving privileges or an identification card.

(2) DMV will reissue a driver permit, driver license or identification card canceled under ORS 809.310(2) because there is an error, i.e. wrong class of license or permit, incorrect endorsement; incorrect date of birth, name, expiration date or issue date once the person surrenders the driver permit, driver license or identification card with the error. If the information on the driver permit, driver license or identification card is wrong because of a DMV error, a no fee replacement will be issued.

(3) DMV will reissue a driver permit, driver license or identification card canceled under ORS 809.310(2) because the address is not the person's residence address as required by law once the person surrenders the driver permit, driver license or identification card with the incorrect information and the person provides DMV with acceptable documentary proof of residence address as described in OAR 735-062-0030(1) and pays all applicable fees.

(4) Notwithstanding sections (1), (2) and (3) of this rule, when a person whose driving privileges or identification card are canceled under ORS 809.310(1) or 809.310(2) is not a resident of Oregon, DMV will rescind the cancellation to allow the person to obtain driving privileges or an identification card in another jurisdiction but will not reissue an Oregon driver license, driver permit, or identification card. The person must:

(a) Request that DMV rescind the cancellation;

(b) Have corrected all applicable conditions that caused the cancellation except for the domicile or residency requirements under ORS 807.062; and

(c) Provide verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction;

(B) The person has surrendered his or her Oregon driver license or identification card to the jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

(C) The cancellation must be rescinded in order for the person to qualify for driving privileges or an identification card in the other jurisdiction.

(5) DMV will issue a driver license, driver permit or identification card when a person described in section (4) of this rule returns to Oregon and the person corrects the condition that caused the cancellation and meets all eligibility requirements for driving privileges or an identification card and pays all applicable fees.

(6) DMV will reinstate the person's driving privileges or identification card, including his or her right to apply suspended under ORS 809.310(3)(b)-(h) when:

(a) One year has elapsed since the effective date of the suspension; and

(b) The person pays the reinstatement fee.

(7) When a person's driving privileges or identification card, including the right to apply, is suspended under ORS 809.310(3)(a), DMV will reinstate the driving privileges or identification card one year from the effective date of the suspension if the person:

(a) Provides proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005(2);

(b) Provides proof of legal presence as provided in OAR 735-062-0015;

(c) Submits to the collection of biometric data and establishes identity as provided in ORS 807.024 and OAR 735-062-0016;

(d) Provides proof of identity and date of birth as provided in OAR 735-062-0020;

(e) Submits proof of residence address as provided in OAR 735-062-0030(1); and

(f) Pays the reinstatement fee.

(8) Notwithstanding section (7) of this rule, when a person's driving privileges or identification card are suspended under ORS 809.310(3)(a) and is no longer a resident of Oregon, he or she may request to have his or her driving privileges, identification card or right to apply be reinstated in order to be issued in another jurisdiction. DMV will not issue an Oregon driver license, driver permit or identification card, but will reinstate the driving privileges, identification card or right to apply when:

(a) One year has elapsed since the effective date of the suspension;

(b) The person provides verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction; and

(B) The person has surrendered his or her Oregon driver license or identification card to that jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

(c) The person pays the reinstatement fee.

(9) A person described in section (8) of this rule, who returns to Oregon, may be eligible for a driver license, driver permit or identification card. DMV will issue a driver license, driver permit or identification card when:

(a) Provides proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005(2);

(b) Provides proof of legal presence as provided in OAR 735-062-0015;

(c) Submits to the collection of biometric data and establishes identity as provided in ORS 807.024 and OAR 735-062-0016;

(d) Provides proof of identity and date of birth as provided in OAR 735-062-0020;

(e) The person submits proof of residence address as provided in OAR 735-062-0030(1); and

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(f) The person meets all eligibility requirements for driving privileges or an identification card and pays all applicable fees.

(10) When DMV cancels a person's driver permit or driver license for withdrawal of consent under ORS 809.320, DMV will reinstate driving privileges when the person:

(a) Pays a replacement driver permit or driver license fee or a renewal fee, if applicable; and

(b) Submits one of the following if the person is under 18 years of age:

(A) An application for a driver permit or driver license that is signed by the person's mother, father or legal guardian;

(B) Court papers showing that the person is declared emancipated by the court; or

(C) Evidence that the person is married.

(11) When DMV cancels a person's driving privileges because the person is not qualified or does not meet the requirements under ORS 807.350, DMV will not grant driving privileges until the person meets the requirements and demonstrates qualification for a driver license under 807.040, 807.050, 807.060, 807.062, 807.065, 807.066 and 807.070.

(12) When the special student driver permit of a person under 16 years of age is canceled under ORS 807.230(7), DMV will only issue driving privileges when the person has reached 16 years of age and if the person is eligible and meets all applicable requirements in 807.040, 807.065 and 807.066 and OAR 735-062-0000 to obtain a driver permit or driver license. When the special student driver permit of a person over 16 years of age is canceled, DMV will not reissue a special student driver permit however the person may apply for a driver license if eligible and if the person meets all applicable requirements in ORS 807.040, 807.065, 807.066 and OAR 735-062-0000.

(13) When an emergency driver permit is canceled under ORS 807.220(3)(g), DMV will:

(a) Reissue an emergency driver permit after one year has elapsed from the effective date of the cancellation if the person is eligible and meets the requirements in OAR 735-064-0230; or

(b) Issue a driver permit or a driver license if the person is eligible and meets all applicable requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0000.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.220, 807.230, 807.400, 809.310, 809.320 & 2008 OL Ch 1
Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0064; MV 14-1992, f. & cert. ef. 10-16-92; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 13-2006, f. 9-22-06, cert. ef. 10-2-06; DMV 19-2006, f. & cert. ef. 12-13-06; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

735-070-0020

Hearing Following a Cancellation

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will grant a contested case hearing for cancellation actions in accordance with sections (5) and (6) of this rule.

(2) A request for a hearing on the cancellation of a driver permit, driver license or identification card must comply with the requirements established in OAR 735-070-0110.

(3) When DMV receives a timely request for a hearing on the cancellation of a driver permit, driver license, or identification card, the cancellation will not go into effect pending the outcome of the hearing, except in the following situations:

(a) When DMV determines that there is a serious danger to the public health, safety, or welfare;

(b) When the cancellation is due to a person's inability to establish identity as required in ORS 807.024 and OAR 735-062-0016;

(c) When the cancellation is for withdrawal of parent's consent; or

(d) When the cancellation has gone into effect.

(4) For the purposes of this rule, a serious danger to the public health, safety or welfare includes, but is not limited to, the following:

(a) A false or fraudulent driver permit, driver license or identification card has been issued and it could be used to facilitate:

(A) A minor's acquisition of alcoholic beverages;

(B) The cashing of forged checks;

(C) The acquisition of property under false pretenses; or

(D) Any other unlawful activity.

(b) A driver permit or driver license is issued to a person whose driving privileges are suspended or revoked at the time the driver permit or driver license is issued. This applies to a situation where DMV would not have issued the driver permit or driver license had it known at the time that the person's driving privileges were suspended or revoked.

(c) A person determined by DMV to be an endangerment to persons or property and denied further testing through cancellation of driving privileges under ORS 807.350 and OAR 735-062-0073(5).

(5) The Office of Administrative Hearings will conduct hearings held on identification card cancellations under ORS 807.400 as contested cases in accordance with 183.310 to 183.550.

(6) The Office of Administrative Hearings will conduct hearings held on driver permit or driver license cancellations under ORS 809.310 not based on a conviction as contested cases in accordance with 183.310 to 183.550.

Stat. Auth.: ORS 183.415, 184.616, 802.010, 807.173 809.440 & 814.619

Stats. Implemented: ORS 807.173 & 809.310

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0067; MV 9-1989, f. & cert. ef. 2-1-89; MV 5-1992, f. & cert. ef. 4-16-92; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 3-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 18-2005(Temp), f. & cert. ef. 8-18-05 thru 2-13-06; DMV 26-2005, f. & cert. ef. 12-14-05; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: Readoption of interstate and international agreements and federal vehicle use-tax regulations.

Adm. Order No.: MCTD 2-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Amended: 740-200-0010, 740-200-0020, 740-200-0040

Subject: Amended OAR 740-200-0010 adopts the revised version of the International Registration Plan (IRP) related to commercial vehicle proportional registration to coincide with the July 1, 2008 effective date and ensure compliance with, and uniformity in application of, the IRP.

International Fuel Tax Agreement (IFTA) and associated materials are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. Amended OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants to ensure Oregon remains current with national and international IFTA standards.

26 CFR Part 41 (Heavy Vehicle Use Tax – HVUT) relates to federal heavy vehicle taxation. Amended OAR 740-200-0020 adopts HVUT and its amendments in effect as of January 1, 2008, and ensures Oregon remains current with national commercial motor vehicle registration standards.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-200-0010

Prorate Registration

(1) The provisions contained in the "International Registration Plan" (IRP), the IRP Audit Procedures Manual and the IRP Policies and Procedures Manual and all amendments thereto in effect July 1, 2008, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty, late payment charges and interest described in ORS 825.490;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes shall be the previous July through June twelve-month period.

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

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 826.005 & 826.007

ADMINISTRATIVE RULES

Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08

740-200-0020

Adoption of Federal Rules Governing Payment of Heavy Vehicle Use Tax (HVUT)

The Department hereby adopts the rules of the United States Internal Revenue Service contained in 26 CFR Part 41 (HVUT) and all amendments thereto in effect January 1, 2008. These rules apply to carriers conducting operations subject to ORS Chapter 826. As provided in CFR Title 26 Part 41.6001-2(b)(3), the Department will suspend the registration of a vehicle for which proof of HVUT payment has not been received within four months of the effective date of registration.

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

Stat. Auth.: ORS 823.011 & 826.007

Stats. Implemented: ORS 803.370(5) & 826.033

Hist.: PUC 19-1990, f. & cert. ef. 12-31-90 (Order No. 90-1919); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08

740-200-0040

Adoption of International Fuel Tax Agreement

(1) The provisions contained in the International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual, and all amendments thereto in effect January 1, 2008, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department shall assess a penalty of \$50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) Upon proposing an additional assessment as the result of an audit, the Department shall assess a penalty of 10 percent of the amount of delinquent taxes due;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

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

Stat. Auth.: ORS 823.011 & 825.555

Stats. Implemented: ORS 825.490 & 825.555

Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08

Employment Department Chapter 471

Rule Caption: Defines a referral list under the collective bargaining agreement as used in ORS 657.176(11)(c).

Adm. Order No.: ED 10-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 8-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 471-030-0215

Subject: Defines a "referral list under the collective bargaining agreement" (used in ORS 657.176(11)(c)) as a list of unemployed union members in good standing who may be selected, notified,

directed or dispatched to job openings with employers who have an agreement with the union.

Rules Coordinator: Janet Orton—(503) 947-1724

471-030-0215

Union Referral List

As used in ORS 657.176(11)(c), "referral list under the collective bargaining agreement" means a list of unemployed members in good standing maintained by a union/labor organization to which the worker belongs. The union/labor organization maintains the referral list for the sole purpose of selecting, notifying, directing and dispatching eligible members to job openings with employers who have a contract/collective bargaining agreement with that union/labor organization and, based on the agreement, only hire members of that union/labor organization referred by that union/labor organization to perform specific categories of job duties. A referral list does not include any list maintained by a union/labor organization solely for the purpose of rehire or recall to the worker's former/current position.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657

Hist.: ED 5-2008(Temp), f. & cert. ef. 4-24-08 thru 10-21-08; ED 10-2008, f. 7-1-08, cert. ef. 8-1-08

Landscape Architect Board Chapter 804

Rule Caption: Revise Code of Conduct; Revise qualifications for LAIT; Identify duties, functions, and powers of LAIT.

Adm. Order No.: LAB 3-2008

Filed with Sec. of State: 7-7-2008

Certified to be Effective: 7-7-08

Notice Publication Date: 11-1-2007

Rules Adopted: 804-027-0005

Rules Amended: 804-022-0000

Rules Ren. & Amend: 804-030-0010 to 804-027-0010, 804-030-0005 to 804-027-0010, 804-050-0001 to 804-050-0005, 804-050-0001 to 804-050-0010, 804-050-0001 to 804-050-0015

Subject: OAR 804-022-0000 outlines qualifications and the registration process for the LAIT.

Division 27 is a new division titled Professional Practice of the Registrant. OAR 804-027-0005 identifies the duties, functions and power of an LAIT. This was not previously clarified in rule. OAR 804.027-0010 discusses the stamping process and the responsibility this entails for Registered Landscape Architects. This information was previously located in Division 30.

OAR 804, Division 50 is the Code of Conduct. In addition to a revision of the language of the original code, the Code now also includes the responsibility of the LAIT, not previously addressed in Administrative Rule. The Division 50 now has 3 rules rather than just one rule.

Rules Coordinator: Susanna Knight—(503) 589-0093

804-022-0000

Landscape Architect in Training (LAIT)

(1) A candidate who has successfully completed two or more sections of the LARE and is working toward registration as a Landscape Architect is qualified to register with the Board as a Landscape Architect in Training (LAIT).

(2) An LAIT registration must be renewed annually. An LAIT registration may only be renewed if the LAIT is working toward registration as a Landscape Architect.

(3) An LAIT may only engage in the practice of landscape architecture under the direct supervision of a Registered Landscape Architect.

Stat. Auth.: ORS 183, 671

Stats. Implemented: ORS 671.335, 671.345, 671.365, 671.425

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1986, f. & ef. 1-3-86; LAB 3-1989, f. 6-23-89, cert. ef. 7-1-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2005, f. & cert. ef. 12-13-05; Renumbered from 804-020-0055, LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2008, f. & cert. ef. 7-7-08

804-027-0005

Landscape Architect in Training (LAIT)

(1) The Code of Professional Conduct (OAR 804, Division 50) applies to LAITs. LAITs have a duty to follow and uphold the Code of Professional Conduct as well as the statutes and rules governing the practice of landscape architecture (ORS 671.310 to 671.459 and OAR Chapter 804).

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(2) The function of an LAIT is to develop skill and competence in the practice of landscape architecture that leads to the passing of the examinations required to become a Registered Landscape Architect.

(3) The LAIT has the power to engage in the practice of landscape architecture under the direct supervision of a Registered Landscape Architect except that the LAIT does not have the power or authority to stamp plans or documents. Only the supervising Registered Landscape Architect is allowed to stamp plans and documents.

Stat. Auth.: ORS 671 & 183

Stats. Implemented: ORS 671.315, 671.316, 671.335, 671.345, 671.365, 671.425 & 671.393
Hist.: LAB 3-2008, f. & cert. ef. 7-7-08

804-027-0010

Registered Landscape Architect

(1) Documents bearing the Registered Landscape Architect's seal and signature shall be those prepared under the supervision of the Registered Landscape Architect.

(2) The seal with the Registered Landscape Architect's signature shall appear on the title page of specifications and on every sheet of the working drawings, as well as on all professional documents and reports.

(3) Registered Landscape Architects shall not affix their seal or allow their seal to be fixed to any plans, drawings, documents, specifications, or reports not personally prepared or prepared under their supervision.

(4) Supervision means the Registered Landscape Architect has exercised guidance, professional judgment, and control in the preparation of all landscape architectural matters shown or contained within the document.

Stat. Auth.: ORS 671 & 183

Stats. Implemented: ORS 671.315, 671.316, 671.335, 671.345, 671.365, 671.425 & 671.393
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98; Renumbered from 804-030-0005 & 804-030-0010, LAB 3-2008, f. & cert. ef. 7-7-08

804-050-0005

Responsibility to the Board

(1) A Registered Landscape Architect or a Landscape Architect in Training must respond to written requests from the Board within 21 days after the request is mailed by registered or certified mail to the Registered Landscape Architect's or Landscape Architect in Training's address of record with the Board.

(2) If a Registered Landscape Architect or a Landscape Architect in Training has information which leads to a reasonable belief that another Registered Landscape Architect or Landscape Architect in Training has committed a violation of this Code of Professional Conduct, or that an individual or business is in violation of the statutes or rules governing the practice of landscape architecture (ORS 671.310 to 671.459 and OAR chapter 804), such information must be promptly reported to the Board.

(3) A Registered Landscape Architect must not dismiss from his or her employment, or take any other action punitive in nature against another Registered Landscape Architect because of the other Registered Landscape Architect's compliance with any part or subsection of this Code of Professional Conduct, or any other provision of OAR chapter 804, or any provisions of ORS 671.310 to 671.459.

(4) A Registered Landscape Architect must not knowingly prepare or stamp construction documents which are in violation of any codes, laws, or regulations.

(5) A Registered Landscape Architect must only verify landscape architecture experience of those applicants for examination or registration that have been under the direct supervision of the Registered Landscape Architect.

(6) A Registered Landscape Architect must only affix a signature to the renewal form verifying completion of Professional Development Hours (PDH) if they have the proper documentation to validate completion of the PDH.

(7) A Landscape Architect in Training must only engage in the practice of landscape architecture under the direct supervision of a Registered Landscape Architect.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.393

Hist.: LAB 2-1987, f. & ef. 6-1-87; LAB 2-1998, f. & cert. ef. 4-22-98, Renumbered from 804-050-0001, LAB 3-2008, f. & cert. ef. 7-7-08

804-050-0010

Responsibility to the Profession

(1) Registered Landscape Architects must conduct professional duties with honesty and integrity. Registered Landscape Architects must comply with all rules and laws governing the practice of landscape architecture and with all orders of the Board.

(2) Registered Landscape Architects and Landscape Architects in Training must not accept, solicit or pay any inducement greater than \$50.00 in the course of professional work during one calendar year to any prospective client in order to gain necessary public approval.

(3) Contemporaneously with government employment, a Registered Landscape Architect must not engage in the private practice of landscape

architecture with any person or firm who does business with the Registered Landscape Architect's employing agency if doing so would constitute any violation of ORS chapter 244.

(4) Registered Landscape Architects must only take credit for work they have performed.

(5) A Registered Landscape Architect must not knowingly misrepresent to clients or the public about the results that can be achieved through the use of the registrant's services, nor state that the Registered Landscape Architect can achieve results by means that violate this code or the law.

(6) Registered Landscape Architects must not reveal information obtained in the course of professional activities which they have been asked to maintain in confidence except when disclosure

(a) Could stop an act which creates a significant risk to the public health, safety or welfare, and could not otherwise be prevented, or

(b) Is necessary in order to comply with applicable laws, orders of a court, or requests or orders of the Board.

(7) A Registered Landscape Architect must perform professional services only when he or she is qualified by education, training, or experience in the specific areas involved.

(8) A Registered Landscape Architect must only sign or seal drawings, specifications, reports, or other professional work for which the Registered Landscape Architect has direct professional knowledge and direct supervisory control.

(9) A Registered Landscape Architect must apply technical knowledge and skills for clients in a manner that meets the standard of technical knowledge and skills applied by Registered Landscape Architects in good standing practicing in the State of Oregon.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.393

Hist.: LAB 2-1987, f. & ef. 6-1-87; LAB 2-1998, f. & cert. ef. 4-22-98, Renumbered from 804-050-0001, LAB 3-2008, f. & cert. ef. 7-7-08

804-050-0015

Responsibility to the Employer

(1) A Registered Landscape Architect must be truthful in representing personal qualifications, capabilities and experience to the client, employer, and public.

(2) A Registered Landscape Architect must not take credit for work performed under the direction of a former employer beyond the accurate definition of his or her project involvement.

(3) A Registered Landscape Architect must make full disclosure of all applicable project information to clients, public and other interested parties who rely on the Registered Landscape Architect's advice and professional work product.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.393

Hist.: LAB 2-1987, f. & ef. 6-1-87; LAB 2-1998, f. & cert. ef. 4-22-98, Renumbered from 804-050-0001, LAB 3-2008, f. & cert. ef. 7-7-08

Office for Oregon Health Policy and Research Chapter 409

Rule Caption: Health Care Acquired Infection Reporting and Public Disclosure.

Adm. Order No.: OHP 1-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 409-023-0000, 409-023-0005, 409-023-0010, 409-023-0015, 409-023-0020, 409-023-0025, 409-023-0030, 409-023-0035

Subject: The general purpose of these rules is to implement the health care acquired infection (HAI) reporting, public disclosure, and other applicable mandates of House Bill 2524, which was enacted by the 74th Legislative Assembly. Included was a mandate to adopt administrative rules to implement the bill by July 1, 2008. These rules are intended to fulfill this mandate by prescribing the HAI that are reported, how they are reported, the health care facilities that report them, and how they are publicly disclosed.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

409-023-0000

Definitions

The following definitions apply to OAR 409-023-0000 to 409-023-0035:

(1) "Administrator" means the administrator of the Office for Oregon Health Policy and Research as defined in ORS 442.011, or the administrator's designee.

ADMINISTRATIVE RULES

(2) "ASC" means ambulatory surgical center as defined in ORS 442.015(4) and that is licensed pursuant to ORS 441.015.

(3) "CBGB" means coronary bypass graft surgery with both chest and graft incisions, as defined in the Patient Safety Component Protocol of the National Healthcare Safety Network (NHSN) manual, version January 2008.

(4) "CBGC" means coronary bypass graft surgery with chest incision only, as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(5) "CDC" means the federal Centers for Disease Control and Prevention.

(6) "CLABSI" means central line associated bloodstream infection as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(7) "CMS" means the federal Centers for Medicare and Medicaid Services.

(8) "Committee" means the Health Care Acquired Infections Advisory Committee as defined in ORS 442.838.

(9) "Dialysis facility" means outpatient renal dialysis facility as defined in ORS 442.015(29).

(10) "Follow-up" means post-discharge surveillance intended to detect CBGB, CBGC, and KPRO surgical site infection (SSI) cases occurring after a procedure.

(11) "HAI" means health care acquired infection as defined in ORS 442.838.

(12) "Health care facility" means a facility as defined in ORS 442.015(16).

(13) "Hospital" means a facility as defined in ORS 442.015(19) and that is licensed pursuant to ORS 441.015.

(14) "ICU" means an intensive care unit as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(15) "KPRO" means knee prosthesis procedure as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(16) "LTC facility" means long term care facility as defined in ORS 442.015(22).

(17) "Medical ICU" means a non-specialty intensive care unit that serves 80% or more adult medical patients.

(18) "Medical/Surgical ICU" means a non-specialty intensive care unit that serves less than 80% of either adult medical, adult surgical, or specialty patients.

(19) "Surgical ICU" means a non-specialty intensive care unit that serves 80% or more adult surgical patients.

(20) "NHSN" means the CDC's National Healthcare Safety Network.

(21) "Office" means the Office for Oregon Health Policy and Research.

(22) "Oregon HAI group" means the NHSN group administered by the Office.

(23) "Patient information" means individually identifiable health information as defined in ORS 179.505(c).

(24) "Person" has the meaning as defined in ORS 442.015(30).

(25) "Procedure" means an NHSN operative procedure as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(26) "Provider" means a health care services provider as defined in ORS 179.505(b).

(27) "QIO" means the quality improvement organization designated by CMS for Oregon.

(28) "RHQDAPU" means the Reporting Hospital Quality Data for Annual Payment Update initiative administered by CMS.

(29) "SCIP" means the Surgical Care Improvement Project.

(30) "SCIP-Inf-1" means the HAI process measure published by SCIP defined as prophylactic antibiotic received within one hour prior to surgical incision.

(31) "SCIP-Inf-2" means the HAI process measure published by SCIP defined as prophylactic antibiotic selection for surgical patients.

(32) "SCIP-Inf-3" means the HAI process measure published by SCIP defined as prophylactic antibiotics discontinued within 24 hours after surgery end time (48 hours for cardiac patients).

(33) "Specialty ICU" means an intensive care unit with at least 80% of adults are specialty patients including but not limited to oncology, trauma, and neurology.

(34) "SSI" means a surgical site infection event as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(35) "State agency" has the meaning as defined in ORS 192.410(5).

Stat. Auth.: ORS 442.838 & ORS 442.420(3)(d)

Stats. Implemented: ORS 442.838, 442.011, 442.015, 442.400, 192.496, 192.502, 192.410 & 179.505

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

409-023-0005

Review

Unless otherwise directed by the administrator, the committee shall review these rules (OAR 409-023-0000 to 409-023-0035) no later than July 1, 2009 and thereafter at least biennially.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)

Stats. Implemented: ORS 442.838

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

409-023-0010

HAI Reporting for Hospitals

(1) Hospitals shall begin collecting data for HAI outcome and process measures for the HAI reporting program for services provided on and after January 1, 2009.

(2) Reportable HAI outcome measures are:

(a) SSIs for CBGB, CBGC, and KPRO procedures.

(b) CLABSI in medical ICUs, surgical ICUs, and combined medical/surgical ICUs.

(3) The infection control professional (ICP), as defined by the facility, shall actively seek out infections defined in sections 2(a) and (b) of this rule during a patient's stay by screening a variety of data that may include but is not limited to:

(a) Laboratory;

(b) Pharmacy;

(c) Admission;

(d) Discharge;

(e) Transfer;

(f) Radiology;

(g) Imaging;

(h) Pathology; and

(i) Patient charts, including history and physical notes, nurses and physicians notes, and temperature charts.

(4) The ICP shall use follow-up surveillance methods to detect SSIs for procedures defined in section 2(a) of this rule using at least one of the following:

(a) Direct examination of patients' wounds during follow-up visits to either surgery clinics or physicians' offices;

(b) Review of medical records, subsequent hospitalization records, or surgery clinic records;

(c) Surgeon surveys by mail or telephone;

(d) Patient surveys by mail or telephone; or

(e) Other facility surveys by mail or telephone.

(5) Others employed by the facility may be trained to screen data sources for these infections, but the ICP must determine that the infection meets the criteria established by these rules.

(6) The HAI reporting system for HAI outcome measures shall be NHSN. Each Oregon hospital shall comply with processes and methods prescribed by CDC for NHSN data submission. This includes but is not limited to definitions, data collection, data reporting, and administrative and training requirements. Each Oregon hospital shall:

(a) Join the Oregon HAI group in NHSN;

(b) Authorize disclosure of NHSN data to the Office as necessary for compliance of these rules including but not limited to summary data and denominator data for all SSIs, the annual hospital survey and data analysis components for all SSIs, and summary data and denominator data for all medical ICUs, surgical ICUs, and combined medical/surgical ICUs; and

(c) Report its data for outcome measures to NHSN no later than 30 days after the end of the collection month.

(7) Each Oregon hospital shall report on a quarterly basis, beginning January 1, 2009, the following HAI process measures:

(a) SCIP-Inf-1;

(b) SCIP-Inf-2; and

(c) SCIP-Inf-3.

(8) The reporting system for HAI process measures shall be the RHQDAPU program as configured on July 1, 2008. Each Oregon hospital shall:

(a) Comply with reporting processes and methods prescribed by CMS for the RHQDAPU program. This includes but is not limited to definitions, data collection, data reporting, and administrative and training requirements; and

(b) Report data quarterly for HAI process measures. Data must be submitted to and successfully accepted into the QIO clinical warehouse no later than 11:59 p.m. central time, on the 15th calendar day, four months after the end of the quarter.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)

Stats. Implemented: ORS 442.838 & 442.405

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

409-023-0015

HAI Reporting for Other Health Care Facilities

ASCs, dialysis facilities, and LTC facilities shall begin collecting data for the HAI reporting program for services provided on and after January 1, 2010 pursuant to rules amended no later than July 1, 2009.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 442.838 & ORS 442.420(3)(d)
Stats. Implemented: ORS 442.838 & ORS 442.405
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

409-023-0020

HAI Public Disclosure

(1) The Office shall disclose to the public updated facility-level and state-level HAI rates at least biannually beginning in January 2010 and at least quarterly beginning in January 2011.

(2) The Office may disclose state-level and facility-level HAI data including but not limited to observed frequencies, expected frequencies, proportions, and ratios beginning in January 2010.

(3) The Office shall summarize HAI data by facilities subject to this reporting in an annual report beginning in January 2010. The Office shall publish the annual report no later than April 30 of each calendar year.

(4) The Office shall disclose data and accompanying explanatory documentation in a format which facilitates access and use by the general public and health care providers.

(5) The Office may use statistically valid methods to make comparisons by facility, and to state, regional, and national statistics.

(6) The Office shall provide a maximum of 30 calendar days for facilities to review facility reported data prior to public release of data.

(7) The Office shall provide facilities the opportunity to submit written comments and may include any submitted information in the annual report.

(8) Pending recommendations from the committee, the Office may publish additional reports intended to serve the public's interest.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)
Stats. Implemented: ORS 442.838, 442.405, 192.496, 192.502, 192.243 & 192.245
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

409-023-0025

HAI Data Processing and Security

(1) The Office shall obtain hospital outcome measure data files directly from NHSN at least quarterly.

(2) The Office shall obtain hospital process measure data files from the CMS hospital compare web site at least quarterly.

(3) The Office shall calculate state-level and facility-level statistics to facilitate HAI public disclosure. These statistics may include but are not limited to observed frequencies, expected frequencies, proportions, rates, and ratios. The Office shall make public the methods used to calculate statistics and perform comparisons.

(4) The Office shall use statistically valid risk adjustment methods recommended by the committee including but not limited to NHSN methodology.

(5) The Office shall undertake precautions to prevent unauthorized disclosure of the raw data files. These precautions include but are not limited to:

- (a) Storing the raw data files on the internal storage hardware of a password-protected personal computer that is physically located within the Office;
- (b) Restricting staff access to the raw data files;
- (c) Restricting network access to the raw data files; and
- (d) If applicable, storing patient information within a strongly-encrypted and password-protected virtual drive or using other methods to reliably achieve the same level of security.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)
Stats. Implemented: ORS 442.838, 192.496 & 192.502
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

409-023-0030

Prohibited Activities

Unless specifically required by state or federal rules, regulations, or statutes, the Office is prohibited from:

- (1) Disclosing of patient information;
- (2) Intentionally linking or attempting to link individual providers to individual HAI events; and
- (3) Providing patient-level or provider-level reportable HAI data to any state agency for enforcement or regulatory actions.

Stat. Auth.: ORS 442.838, 442.420(3)(d)
Stats. Implemented: ORS 442.838, 192.496 & 192.502
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

409-023-0035

Compliance

(1) Health care facilities that fail to comply with these rules or fail to submit required data shall be subject to civil penalties not to exceed \$500 per day per violation.

(2) The Office shall annually evaluate the quality of data submitted, as recommended by the committee.

Stat. Auth.: ORS 442.445 & 442.420(3)(d)
Stats. Implemented: ORS 442.445
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08

Rule Caption: Establishment of the Community Benefit Reporting Program for Oregon Hospitals.

Adm. Order No.: OHP 2-2008

Filed with Sec. of State: 7-1-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 409-023-0100, 409-023-0105

Subject: The general purpose of these rules is to implement the community benefit reporting, public disclosure, and other applicable mandates of House Bill 3290, which was enacted by the 74th Legislative Assembly. These rules are intended to fulfill this mandate by prescribing the community benefit information that is reported, how it is reported, and how the information is disclosed to the public.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

409-023-0100

Definitions

The following definitions apply to OAR 409-023-0100 to 409-023-0105:

(1) "Charity care" means free or discounted health services provided to persons who cannot afford to pay and from whom a hospital has no expectation of payment. Charity care does not include bad debt, contractual allowances, or discounts for quick payment. Charity care is reported on the basis of cost, not gross charges by adjusting charges by a ratio of cost to charges (RCC).

(2) "Community" means the geographic service area and patient population that the health care institution serves as defined by the hospital.

(3) "Community benefits" mean programs or activities that provide treatment or promote health and healing as a response to identified community needs. They are not provided primarily for marketing purposes or to increase market share.

(a) Community benefit must meet at least one of the following criteria:

- (A) Generate negative margin;
- (B) Improve access to health services;
- (C) Enhance population health;
- (D) Advance knowledge;
- (E) Demonstrate charitable purpose.

(b) Community benefit activities must be counted in only one of the following categories:

- (A) Charity care;
- (B) Losses related to Medicaid, Medicare, State Children's Health Insurance Program, or other publicly funded health care program shortfalls;
- (C) Community health improvement services;
- (D) Health professionals' education;
- (E) Subsidized health services;
- (F) Research;
- (G) Financial and in-kind contributions to the community;
- (H) Community building activities;
- (I) Community benefit operations.

(4) "Cost" means the total expense incurred by the hospital minus any offsetting revenue (e.g. grants, payments).

(5) "Hospital" has the meaning provided in ORS 442.015.

(6) "Office" means the Office for Oregon Health Policy and Research.

Stat. Auth.: ORS 442.205
Stats. Implemented: ORS 442.205, 442.011, 442.200, 442.425 & 442.445
Hist.: OHP 2-2008, f. & cert. ef. 7-1-08

409-023-0105

Reporting

(1) Hospital reporting required pursuant to this rule shall begin with hospital fiscal years beginning on or after January 1, 2008 and must be consistent with generally accepted accounting principles.

(2) The hospital must submit a community benefit report to the Office within 240 days from the close of the hospital's fiscal year. The report will be deemed submitted as of the date the report is postmarked or electronically delivered to the Office, whichever is first.

(3) Hospitals may submit an amended report after submission of original report to the Office within 30 days of the report submittal deadline. The amended report must include a written explanation for the reason for the amendment.

(4) Hospitals that are part of a multi-hospital system may submit reports for all system hospitals in one submission, but each hospital must be separately reported and clearly identified in any submission. Nothing in this section removes the requirement that hospitals report their individual community benefit report.

(5) If the ownership of the hospital changes during the reporting year, each hospital owner shall be required to submit a community benefit report for the hospital for the portion of the year owned.

ADMINISTRATIVE RULES

(6) Each hospital must submit, on an annual basis, a community benefit report on form CBR-1 as defined by the Office. The report must be completed in accordance with instructions published in the Community Benefit Reporting Guidelines (CBR-2). The Office shall inform each hospital subject to reporting of any changes for the subsequent year by July 1.

(a) Reporting only includes activities under the direct control and management of hospital management and occurring during the fiscal year of the report.

(b) Hospitals must not include a community benefit cost in more than one category as defined by the Community Benefit Reporting Guidelines (CBR-2). These guidelines shall be posted on the Office web site. The Office must inform each hospital subject to this reporting of any changes in guidelines for the subsequent year by July 1.

(7) A hospital may submit, in addition to the reporting required in section (6), its financial assistance policy or any additional qualitative documents it deems appropriate. Any submission should be clearly identified for explanation of one of the community benefit categories defined in CBR-1.

(8) A parent company or academic health center may submit quantitative and qualitative information about the community benefit provided by the parent company or academic health center and should comply with the definition of community benefit as defined in this rule. Any information provided should clearly identify the hospitals included.

(9) Any information provided to the Office pursuant to this reporting will be publicly available and may be included in the annual report produced by the Office.

(10) The Office shall produce and publicly report, by hospital, an annual report of the community benefit information submitted to the Office.

(11) A hospital that fails to report as required in these rules may be subject to a civil penalty not to exceed \$500 per day.

Stat. Auth.: ORS 442.205

Stats. Implemented: ORS 442.205, 442.011, 442.200, 442.425 & 442.445

Hist.: OHP 2-2008, f. & cert. ef. 7-1-08

Oregon Department of Education Chapter 581

Rule Caption: Prescribes requirements for student attendance in charter schools that offer on-line courses.

Adm. Order No.: ODE 16-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 4-1-2008

Rules Adopted: 581-020-0339

Subject: The rule places requirements on charter schools that offer on-line courses for calculation of percentage of students who attend charter school and reside within school district where charter school is located. The rule defines full-time equivalent student and specifies who the rule applies to.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-020-0339

Attendance Requirements For Charter Schools Offering On-Line Courses

(1) If a charter school offers an on-line course, then 50 percent or more of the full-time equivalent (FTE) students who attend the charter school and are in the active roll of the school must reside in the school district in which the school is located.

(2) The full-time equivalent students of a charter school include any students who attend two or more hours of classes offered by the charter school. The classes may be part of the regular school program offered by the charter school or part of a program that is not part of the regular school program such as a summer school program or credit recovery program.

(3) The total FTE of students of a charter school shall be calculated as follows:

(a) Students attending more than one-half of the full-day program of a charter school shall be given an FTE of 1.0.

(b) Students attending two or more classes but not more than one-half of the full-day program of the charter school shall be given an FTE of 0.5.

(c) A school may combine the FTE of two students who attend the school on a part-time basis to equal one full-time equivalent student.

(d) Students attending less than two classes shall be given an FTE of 0.

(4) A charter school is not required to remove a student from attendance at the school to meet the requirements of section (1) of this rule if the school met the requirements of section (1) of this rule when the student was first admitted to the school.

(5) Except as provided in section (6) of this rule, this rule applies to any charter school that:

(a) Executed or renewed a charter agreement on or after September 2, 2005; and

(b) Offers an on-line course as part of the curriculum of the school on or after July 1, 2008.

(6) This rule does not apply to any charter school that has been granted a waiver from the State Board of Education from the requirements of ORS 338.125(2)(b) or this rule until the expiration date of the waiver.

Stat. Auth.: ORS 338.025

Stats. Implemented: ORS 338.125

Hist.: ODE 16-2008, f. & cert. ef. 6-27-08

Rule Caption: Prescribes requirements for assessment of essential skills for purposes of determining student eligibility for diploma.

Adm. Order No.: ODE 17-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 5-1-2008

Rules Adopted: 581-022-0615

Subject: Requires school districts and public charter schools to administer local performance assessments to determine students' proficiency in the Essential Skills. Directs Superintendent of Public Instruction to establish panel to make recommendations about phasing in essential skills, assessment pathways and achievement standards.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-0615

Assessment of Essential Skills

(1) Definitions. As used in this rule:

(a) "Assessment option" means an assessment approved to assess proficiency in the Essential Skills for the purpose of earning a high school diploma or a modified diploma.

(b) "Essential Skills" means process skills that cross academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings.

(c) "Local performance assessment" means a standardized measure (e.g., activity, exercise, problem, or work sample scored using an official state scoring guide), embedded in the school districts' and public charter schools' curriculum that evaluates the application of students' knowledge and skills.

(d) "Official state scoring guide" means an evaluation tool designed for scoring student work that includes specific, consistent assessment criteria for student performance and a 1-6 point scale to help rate student work. It is used by Oregon teachers to evaluate student work samples.

(e) "Student-initiated test impropriety" means student conduct that:

(A) Is inconsistent with:

(i) The Test Administration Manual; or

(ii) Accompanying guidelines; or

(B) Results in a score that is invalid.

(f) "Work sample" means a representative sample of individual student work (e.g., research papers, statistical experiments, speaking presentations, theatrical performances, work experience) that may cover one or more content areas and therefore may be scored using one or more official state scoring guide(s). At the high school level, a work sample can be used to fulfill both the local performance assessment requirement and the Essential Skills requirement described in sections (2) and (3) of this rule.

(2) School districts and public charter schools that offer grades 3 through 8 or high school shall administer local performance assessments for students in grades 3 through 8 and at least once in high school. For each skill area which has been phased in for local performance assessments, the assessments shall consist of:

(a) One work sample per grade scored using official state scoring guides; or

(b) Comparable measures adopted by the district.

(3) School districts and public charter schools shall assess high school students' proficiency in the Essential Skills using assessment options that are approved by the State Board of Education for the purpose of student eligibility for:

(a) The high school diploma as established in OAR 581-022-1130; or

(b) The modified diploma as established in OAR 581-022-1134.

(4) Pursuant to ORS 339.115 and 339.505, school districts and public charter schools shall provide any eligible student with instruction in and multiple assessment opportunities to demonstrate proficiency in the Essential Skills for the purpose of achieving the high school or modified diploma.

(5) To be eligible to receive a high school diploma or a modified diploma:

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(a) For students graduating on or after September 1, 2011 and prior to September 1, 2012, school districts and charter schools shall assess students' proficiency in the Essential Skills listed in Section 15(b) of this rule.

(b) For students graduating on or after September 1, 2012, school district and public charter schools shall assess students' proficiency in the Essential Skills for which the Oregon Department of Education (ODE) has adopted assessment options by March 1 of the student's 8th grade year.

(6) The Superintendent of Public Instruction shall establish an Assessment of Essential Skills Review Panel (AESRP) to make recommendations on:

(a) The phasing in of Essential Skills for inclusion in the high school and modified diploma requirements;

(b) Criteria for local assessment options;

(c) The adoption of assessment options to measure students' proficiency in the approved Essential Skills for the purpose of the high school or modified diploma; and

(d) The achievement standards used to determine student eligibility for the high school or modified diploma.

(7) The AESRP shall work toward the goal of a system with a high degree of technical adequacy and equivalent vigor between assessment options as practicable.

(8) The AESRP shall base its recommendations on evidence provided by:

(a) School districts;

(b) Research organizations; and

(c) Other experts.

(9) The AESRP shall consist of assessment experts from:

(a) School districts, including but not limited to:

(A) Superintendents;

(B) Principals;

(C) Curriculum Directors;

(D) Educators;

(E) Special education educators; and

(F) English Language Learners (ELL) educators;

(b) Post-secondary education institutions; and

(c) Business partners who have expertise in:

(A) Assessment design;

(B) Assessment administration; or

(C) Use of assessments

(10) The State Board of Education shall make the determination to adopt the AESRP's recommended criteria for local assessment options, assessment options, and achievement standards for the purpose of conferring high school diplomas and modified diplomas. The determination of the State Board of Education will be final and not subject to appeal.

(11) The ODE shall issue the State Board of Education's intentions regarding the AESRP's recommendations by December 15 of each year and formal notice of the State Board of Education's final determination regarding the AESRP's recommendations by March 1 of each year as an addendum to the Test Administration Manual, which the ODE shall issue by August 1 of each year.

(12) School districts and public charter schools shall adhere to the requirements set forth in the Test Administration Manual to:

(a) Administer;

(b) Score;

(c) Manage; and

(d) Document the district and school assessments of students' proficiency in the Essential Skills required to receive a high school diploma or modified diploma.

(13) School districts and public charter schools shall establish conduct and discipline policies addressing student-initiated test impropriety.

(14) School districts and public charter schools shall allow students to use assessment options and achievement standards adopted in a student's ninth through twelfth grade years as follows:

(a) Students may demonstrate proficiency in the Essential Skills using assessment options adopted in their ninth through twelfth grade years.

(b) Students may use achievement standards adopted in their 9th through 12th grade years that are equal to or lower than the achievement standards approved as of March 1 of the students' 8th grade year.

(15) The ODE shall publish the subset of Essential Skills assessment options and the associated performance levels which may be used by each of Oregon's post-secondary institutions as defined by those institutions' policies provided to the ODE by October 15 of each year.

(16) This rule is effective July 1, 2008. The guidelines that are effective on and after July 1, 2008 until otherwise changed through the process described in this rule are as follows:

(a) Essential Skills include:

(A) Read and comprehend a variety of text;

(B) Write clearly and accurately;

(C) Listen actively and speak clearly and coherently;

(D) Apply mathematics in a variety of settings;

(E) Think critically and analytically;

(F) Use technology to learn, live, and work;

(G) Demonstrate civic and community engagement;

(H) Demonstrate global literacy; and

(I) Demonstrate personal management and teamwork skills.

(b) Essential Skills for which the ODE has adopted assessment options:

(A) Read and comprehend a variety of text;

(B) Write clearly and accurately;

(C) Speak clearly and coherently; and

(D) Apply mathematics in a variety of settings.

(c) School districts and public charter schools shall include one or more local performance assessments for grades 3 through 8 and for high school for each of the following skill areas:

(A) Writing;

(B) Speaking;

(C) Mathematical problem-solving; and

(D) Scientific inquiry.

(d) School districts and public charter schools may include one social science analysis work sample that is administered in accordance with school district or public charter school policies as a local performance assessment for grades 3 through 8 and for high school.

(e) For students on an Individualized Education Plan (IEP) or 504 Plan, if a student's IEP Team determines that the nature of a student's disability prevents the student from demonstrating proficiency in an Essential Skill using any of the approved assessment options listed in the Test Administration Manual, the student's IEP Team may exempt the student from the requirement as listed in the Test Administration Manual and determine an appropriate replacement assessment option for the student to use that addresses the Essential Skill in a format that is consistent with:

(A) The student's instructional plan; and

(B) The state assessment criteria adopted by the State Board of Education.

Stat. Auth.: ORS 329.451, 338.025, 339.115, and 339.505

Stats. Implemented: 329.045, 329.075, 329.451, 329.485 and 338.115

Hist.: ODE 17-2008, f. & cert. ef. 6-27-08

Rule Caption: Modifies requirements relating to high school diploma.

Adm. Order No.: ODE 18-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 4-1-2008

Rules Amended: 581-022-1130

Subject: The rule amendment adds requirements for students to develop an education plan and to build an education profile. These requirements were previously in another rule. The rule also allows students to satisfy the requirements for a diploma is less than four years.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-1130

Diploma Requirements

(1) Each district school board and public charter school with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (2) to (10) of this rule and all local school district requirements as described in district school board policies or all public charter school requirements as described in the policies or charter of the public charter school.

(2) Unit of Credit Requirements for students graduating before July 1, 2009:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

(A) English Language Arts — 3 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 22;

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(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Unit of Credit Requirements for students graduating on or after July 1, 2009 and before July 1, 2012:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(4) Unit of Credit Requirements for students graduating on or after July 1, 2012:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 3;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(5) Unit of Credit Requirements for students graduating on or after July 1, 2014:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3 (shall include one unit at the Algebra I level and two units that are at a level higher than Algebra I);

(C) Science — 3;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(6) Each student shall demonstrate proficiency in essential skills adopted by the State Board of Education as provided in OAR 581-022-0615 ;

((7) School districts shall develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7 through 12 with adult guidance. The plan and profile shall be reviewed and updated periodically (at least annually) and be supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.

(8) Each student shall develop an education plan and build an education profile.

(a) Each student shall develop an education plan that:

(A) Identifies personal and career interests;

(B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);

(C) Sets goals to prepare for transitions to next steps identified in section 6(b);

(D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsection (a) (A), (B) and (C) of this rule that includes but is not limited to:

(i) Appropriate coursework and learning experiences;

(ii) Identified career-related learning experiences; and

(iii) Identified extended application opportunities.

(b) Through the education profile each student shall:

(A) Monitor progress and achievement toward standards including:

(i) Content standards;

(ii) Essential skills;

(iii) Extended application standard; and

(iv) Other standards where appropriate (e.g. industry standards).

(B) Document other personal accomplishments determined by the student or school district.

(C) Review progress and achievement in subsection (b)(A) and (B) of this subsection at least annually.

(9) Each student shall build a collection of evidence, or include evidence in existing collections(s), to demonstrate extended application (as defined in OAR 581-022-0102);

(10) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-0102);

(11) Notwithstanding sections (1) to (10) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1134.

(12) Notwithstanding sections (1) to (10) of this rule and as provided in OAR 581-022-1135, schools districts and public charter schools shall make an alternative certificate available to students as an alternative for students who do not obtain the regular diploma or modified diploma.

(13) Attendance Requirements:

(a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;

(b) Notwithstanding subsection (a) of this section, a student may satisfy the requirements of section (2) or (3) of this rule in less than four years. If the school district or public charter school has the consent of the student's parent or guardian, a school district or public charter school shall award a diploma to a student upon request from the student, if the diploma is awarded:

(A) Prior to July 1, 2009 and the student satisfies the requirements of section (2) of this rule.

(B) On or after July 1, 2009 and before July 1, 2012 and the student satisfies the requirements of section (3) of this rule.

(C) On or after July 1, 2012 and before July 1, 2014 and the student satisfies the requirements of section (4) of this rule.

(D) On or after July 1, 2014 and the student satisfies the requirements of section (5) of this rule.

(c) If a school district or public charter school has the consent of a student's parent or guardian, the school district or public charter school may advance the student to the next grade level if the student has satisfied the requirements for the student's current grade level.

ADMINISTRATIVE RULES

(d) The requirement for obtaining the consent of a student's parent or guardian under subsections (b) and (c) of this section does not apply to a student who is:

- (A) Emancipated pursuant to ORS 419B.550 to 419B.558; or
- (B) 18 years of age or older.

(e) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(f) With any modification of the attendance requirements for graduation, school district and public charter school staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district or public charter school guidelines and the wishes of parents and guardians

Stat. Auth.: ORS 326.051 & 329.451

Stats. Implemented: ORS 326.051, 329.451 & 329.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 18-2006, f. 12-11-06, cert. ef. 12-12-06; ODE 18-2007, f. & cert. ef. 9-10-07; ODE 18-2008, f. & cert. ef. 6-27-08

Rule Caption: Modifies requirements of Comprehensive Guidance and Counseling Program administered by school districts.

Adm. Order No.: ODE 19-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 4-1-2008

Rules Amended: 581-022-0405, 581-022-1510

Rules Ren. & Amend: 581-023-0050 to 581-022-1512

Subject: Modifies requirements for comprehensive guidance and counseling programs provided by school districts. Directs schools districts to implement career education as part of district's comprehensive guidance and counseling programs. Modifies requirements for child development specialist programs offered by school districts.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-0405

Career Education

Each school district shall implement plans for career education for Grades K through 12, as part of its comprehensive guidance and counseling program, based on the Oregon Department of Education's "Framework for Comprehensive Guidance and Counseling Programs for Pre-Kindergarten through Twelfth Grade." Career education curriculum is part of the overall comprehensive guidance and counseling curriculum, written to address Essential Skills, Education Plan and Education Profile and the four interrelated student developmental domains: academic, career, personal/social, and community involvement.

Stat. Auth.: ORS 326.051 & 329.275

Stats. Implemented: ORS 326.051

Hist.: 1EB 19-1980, f. 6-17-80, ef. 9-1-81; EB 4-1989, f. & cert. ef. 1-23-89; ODE 19-2008, f. & cert. ef. 6-27-08

581-022-1510

Comprehensive Guidance and Counseling

(1)(a) District Comprehensive Guidance and Counseling. Each school district shall provide a coordinated comprehensive guidance and counseling program to support the academic, career, personal/social, and community involvement development of each and every student. The district shall:

(b) Adopt comprehensive guidance and counseling program goals that assist students to:

(A) Understand and utilize the educational opportunities and alternatives available to them;

(B) Meet academic standards;

(C) Establish tentative career and educational goals;

(D) Create and maintain an education plan and education portfolio;

(E) Demonstrate the ability to utilize personal qualities, education and training, in the world of work;

(F) Develop decision-making skills;

(G) Obtain information about self;

(H) Accept increasing responsibility for their own actions, including the development of self-advocacy skills;

(I) Develop skills in interpersonal relations, including the use of affective and receptive communication;

(J) Utilize school and community resources.

(K) Demonstrate and discuss personal contributions to the larger community; and

(L) Know where and how to utilize personal skills in making contributions to the community.

(2) School Comprehensive Guidance and Counseling. Each school shall provide a comprehensive guidance and counseling program that serves students K through 12, based upon the Oregon Department of

Education's "Framework for Comprehensive Guidance and Counseling Programs for Pre-Kindergarten through Twelfth Grade" which:

(a) Identifies staff responsibilities to plan, design and deliver a comprehensive guidance and counseling program that meets the unique needs of their students and community;

(b) Aligns with the district's school improvement plans;

(c) Assigns guidance and counseling responsibilities to the appropriate personnel;

(d) Expects all school staff to participate in implementing the comprehensive guidance and counseling program;

(e) Assists each student to develop, and annually review, an educational plan (a formalized plan and process in which students establish their education, career and life goals, identify learning goals and connect them to activities that will help them achieve their goals) in grades 7-12. and

(3) Guidance Staff Assignments. Each school district shall maintain a licensed staff and promote effective guidance practices consistent with the district's expected comprehensive guidance and counseling program outcomes. In determining staffing for the program, the following shall be considered:

(a) Alignment with the American School Counselor Association recommended student to counselor ratio of 250:1;

(b) The number of aides or clerical staff assigned to support the implementation of the comprehensive guidance and counseling program.

Stat. Auth.: ORS 326.051 & 329.275

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 19-2008, f. & cert. ef. 6-27-08; ODE 19-2008, f. & cert. ef. 6-27-08

581-022-1512

Child Development Specialist Programs

(1) A Child Development Specialist program is an optional elementary (grades K-8 or any configuration thereof) component of a district's comprehensive guidance and counseling program for grades K-12, based on the Oregon Department of Education's "Framework for Comprehensive Guidance and Counseling Programs for Pre-Kindergarten through Twelfth Grade" under OAR 581-022-1510.

(2) The district school board of every school district operating elementary schools may make the services of a Child Development Specialist available to the children and their families residing in attendance areas of the schools. A Child Development Specialist may serve as guidance staff to help implement the comprehensive guidance and counseling program.

(3) If a district school board chooses to establish a child development specialist program, the school district must meet the following requirements:

(a) The school district shall submit a written plan describing the program to the Department of Education and the program must be approved by the department.

(b) Upon department approval of a district's plan, a school district may submit a child development specialist candidate application for department approval.

(c) The school district shall conduct an annual review of the program and submit an updated plan to the department for reauthorization of the program.

(d) Each Child Development Specialist employed by a school district shall complete an annual evaluation of the specialist's child development plan to be included with the school district's updated plan.

(4) The department will:

(a) Conduct an annual program review of any district that has established or chooses to establish a Child Development Specialist Program as an elementary, grades K-8, component of the district's K-12 comprehensive guidance and counseling program.

(b) Conduct an annual review of each Child Development Specialist's Summary of Activities as part of the reauthorization process.

(c) Up-date and post all child development specialist forms needed for program approval and CDS authorization/reauthorization on the Oregon Department of Education web page annually.

(d) Maintain a Child Development Specialist Advisory Committee to hear appeals by districts or Child Development Specialist, or to serve when requested by the department for input.

Stat. Auth.: ORS 326.051 & 329.275

Stats. Implemented: ORS 329.255, 329.265 & 329.385

Hist.: 1EB 199, f. 7-1-75, ef. 9-1-75; 1EB 18-1981, f. & ef. 12-23-81; EB 11-1992, f. & cert. ef. 4-7-92; Renumbered from 581-022-1512, ODE 19-2008, f. & cert. ef. 6-27-08

Rule Caption: Adds requirements to English as a Second Language programs provided by school districts.

Adm. Order No.: ODE 20-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 4-1-2008

Rules Amended: 581-023-0100

ADMINISTRATIVE RULES

Subject: School district receive additional weight in school funding formula for students who are enrolled in English as a Second Language (ESL) program. Existing rules specify that ESL programs must meet basic federal guidelines. The amendments to rules add that school districts must describe the district's educational approach and provide a process for transition from English Language Learner (ELL) services.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-023-0100

Eligibility Criteria for Student Weighting for Purposes of State School Fund Distribution

- (1) The following definitions apply to this rule:
 - (a) "Average Daily Membership" or "ADM" means the membership defined in ORS 327.006(3) and OAR 581-023-0006;
 - (b) "Days in Session" means number of days of instruction during which students are under the guidance and direction of teachers;
 - (c) "Department" means the Oregon Department of Education;
 - (d) "Language Minority Student" means:
 - (A) Individuals whose native language is not English; or
 - (B) Individuals who come from environments where a language other than English is dominant; or
 - (C) Individuals who are Native Americans or Native Alaskans and who come from environments where a language other than English has had a significant impact on their level of English proficiency.
 - (e) "Superintendent" means the State Superintendent of Public Instruction;
 - (f) "Weighted Average Daily Membership" or "ADMw" means the ADM plus an additional amount or weight as described in ORS 327.013, subject to the limitations imposed by Section (4)(a), Chapter 780, Oregon Laws 1991.
- (2) Pursuant to ORS 327.013(7)(a)(A) the resident school districts shall receive one additional ADM or "weight" for children with disabilities who comprise up to 11 percent of the district's ADM. The Department will calculate the percentage of children with disabilities on the basis of resident counts of students eligible for weighting from the Special Education Child Count and the resident ADM:
 - (a) To be eligible, a student must be in the ADM of the school district and meet the following criteria:
 - (A) The student must be eligible for special education having been evaluated as having one of the following conditions: Mental retardation, hearing impairment including difficulty in hearing and deafness, speech or language impairment, visual impairment, serious emotional disturbance, orthopedic or other health impairment, autism, traumatic brain injury or specific learning disabilities; and
 - (B) The student must be between the ages 5 and 21 and generate federal funding for purposes of special education.
 - (b) Districts may apply for an exception to the 11 percent ceiling. Applications are to be made on forms provided by the Department. Upon receipt of the application the Superintendent may conduct a complete review of a district's special education records. The Superintendent shall develop a process for conducting such reviews which will include the following elements:
 - (A) Comparison of district claims with those submitted by other districts;
 - (B) Participation of school district and education service district staff in the review. No district staff shall be asked to review claims submitted by the employing district.
 - (C) After considering the recommendations of the review committee the Superintendent may allow all or a portion of the requested added weighted ADM over 11 percent;
 - (d) The Superintendent shall make the determination of approval for funding above the 11 percent limitation. Such determination may be appealed for review by the State Board of Education according to a process established by the Superintendent;
 - (e) If the review indicates that a district has claimed ineligible special education students, the Superintendent also shall withhold the related federal funds from the district, pursuant to OAR 581-015-0049;
 - (f) A district must submit an application for an exception to the 11 percent ceiling no later than six months after the close of the year for which payment is being sought. Payments for allowable exceptions shall be made in the following school year as part of the May 15 payment.
 - (3) Pursuant to ORS 336.640(4), the resident school districts shall receive an additional 1.0 times the ADM of all eligible pregnant and parenting students:
 - (a) To be eligible, a student must be in the ADM of the resident school district and meet the following criteria:
 - (A) The student must be identified through systematic procedures established by the district;

(B) The student must be enrolled and receiving services described in ORS 336.640(1)(b) and (d);

(C) The student must have an individualized written plan for such services which identifies the specific services, their providers, and funding resources.

(b) Students counted in section (2) of this rule are not eligible under this section.

(4) Pursuant to ORS 327.013(7)(a)(B), the resident school districts shall receive an additional .5 times the ADM of all eligible students enrolled in an English as a Second Language program. To be eligible, a student must be in the ADM of the school district in grades K through 12 and be a language minority student attending English as a Second Language (ESL) classes in a program which meets basic U.S. Department of Education, Office of Civil Rights guidelines. These guidelines provide for:

(a) Educational Theory and Approach that describes the district's educational approach (e.g., ESL, transitional bilingual education, structured English immersion, dual language, etc.) for educating English Language Learner (ELL) students that is recognized as a sound approach by experts in the field, or recognized as a legitimate educational strategy to ensure that ELL students acquire English language proficiency and are provided meaningful access to the educational program.

(b) A systematic procedure for identifying students who may need ESL classes, and for assessing their language acquisition and academic needs;

(c) A planned program for ESL and academic development, using instructional methodologies recognized as effective with language minority students;

(d) Instruction by credentialed staff and trained in instructional strategies that are effective with second language learners and language minority students, or by tutors supervised by credentialed staff trained in instructional strategies that are effective with second language learners and language minority students;

(e) Adequate equipment and instructional materials;

(f) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.

(g) Process for transition from ELL Services that include procedures and criteria for determining when students no longer need those services. The criteria shall include:

(A) Achieving at the Advanced level on the State's English Language Proficiency Assessment (ELPA).

(B) The Advanced level is a culmination of progress demonstrated on the same state proficiency measure over a legitimate period of time.

(5) Students served in the following programs are not eligible for weighting:

(a) Programs funded fully by state funds, programs funded fully by federal funds, and programs funded fully by a combination of state and federal funds;

(b) Private and parochial schools unless placed by the resident district in a registered private alternative program or state approved special education program;

(c) Instruction by a private tutor or parent under ORS 339.035.

(6) No later than January 15 of each year, the designated official for a school district shall submit to the Department a report of students eligible under sections (3) and (4) of this rule. The report shall include the following data for the period October 1 through December 31:

(a) Total days in session for the quarter ending December 31 for the school or program reporting;

(b) Total days membership for the quarter ending December 31 for all students served in eligible programs.

(7) Not later than July 10 of each year, the designated official for a school district shall submit to the Department a final report of students eligible under sections (3) and (4) of this rule. The report shall include the following:

(a) Total days in session during the regular school year for the school or program reporting;

(b) Name of each student;

(c) Total days membership beginning with the first day of instruction for each student and ending with the date of withdrawal from the eligible program or the end of the regular school year, whichever comes first;

(d) Grade level of the student.

(8) School districts must retain supporting documentation for a minimum of two years.

(9) The Department shall perform periodic reviews of the eligibility of students reported for additional weighting. Any funds provided for ineligible students shall be recovered by the Department for redistribution to school districts.

Stat. Auth.: ORS 327.013 & 327.125

Stats. Implemented: ORS 327.013 & 327.125

Hist.: EB 31-1992, f. & cert. ef. 10-14-92; EB 6-1994, f. & cert. ef. 4-29-94; ODE 20-2008, f. & cert. ef. 6-27-08

ADMINISTRATIVE RULES

Oregon Film and Video Office Chapter 951

Rule Caption: Define “Eligibility Determination” to meet legislative change.

Adm. Order No.: FVO 1-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 6-1-2008

Rules Amended: 951-002-0010

Subject: Projected spending in Oregon on the production is reasonably anticipated to equal or exceed US \$750,000.

Rules Coordinator: Susan Haley—(503) 229-5832

951-002-0010

Eligibility Determination

(1) Except as set forth in sections (2) and (3), the OFVO will approve the applications for eligibility for productions that satisfy the following requirements:

(a) The production satisfies the non-monetary portions of the “qualifying film or television production” definition.

(b) Projected spending in Oregon on the production is reasonably anticipated to equal or exceed US \$750,000.00.

(c) The producer includes, with its application, a letter to the OFVO stating the producer’s intent to film the production in Oregon and its willingness and ability to enter into a contract with the OFVO setting forth the terms and conditions of the rebate.

(2) The following productions are not eligible:

(a) Productions of a producer that has, or whose principals have, a verifiable history of previous production problems that create significant doubt, as determined by the OFVO, regarding the producer’s ability to complete a production in Oregon successfully. The production problems may include, but are not limited to:

(A) Unpaid financial obligations;

(B) Crew mistreatment; or

(C) damage to locations that the producer did not repair upon completion of the production.

(b) Productions with respect to which the producer withdraws its application for eligibility determination.

(c) Productions whose applications for eligibility are filed at times when there are not sufficient funds available in the Oregon Production Investment Fund to pay the anticipated rebates.

(d) Productions that the OFVO determines are unlikely to further the purposes of the Oregon Production Investment Fund. Productions that pay any employee less than the minimum wage as set forth in Oregon Minimum Wage Rule. Rebates will not be issued until complaints filed with the Bureau of Labor and Industries have been satisfied.

(3) If the OFVO receives multiple relatively concurrent applications for eligibility determinations and there are not sufficient funds available in the Oregon Production Investment Fund to pay anticipated rebates with respect to all of the productions, the OFVO will determine which applications to approve and which to deny based on the following factors:

(a) Satisfaction of requirements of section (1);

(b) Chronological order of receipt of application;

(c) Amount of production spending anticipated in Oregon;

(d) Number of film workers expected to be hired;

(e) Whether the production company intends to pay prevailing industry rates and provide health, retirement and other benefits;

(f) Whether receipt of a production rebate from the OPIF is a determining factor in bringing or keeping the production in Oregon;

(g) Experience level of producer;

(h) Reputation of the producer and its principals;

(i) Estimated production start date;

(j) Other benefits to Oregon, including but not limited to promotional value, long-term financial benefits, contribution to development of Oregon’s crew and talent base or production industry infrastructure.

(k) Whether the production company has contributed to the Oregon Production Investment Fund.

(4) Upon approval of an application for eligibility with respect to a production, the producer must enter into a contract with OFVO stipulating the producer’s intent to film the production in Oregon and setting forth the terms and conditions of the rebate. If the producer and the OFVO have not entered into the contract within 30 days of the production’s eligibility approval, the production’s eligibility will be automatically revoked unless the OFVO, in its discretion, extends the deadline for contract execution.

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04; FVO 1-2007, f. & cert. ef. 6-1-07; FVO 1-2008, f. & cert. ef. 6-27-08

Rule Caption: Clarify payment options and delete language around credits for July 2005.

Adm. Order No.: FVO 2-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 6-27-08

Notice Publication Date: 6-1-2008

Rules Amended: 951-003-0005

Subject: Contributions may be made only by check or direct wire. Qualifying contributions for July 2005 are no longer acceptable.

Rules Coordinator: Susan Haley—(503) 229-5832

951-003-0005

Allocation of Certificates

(1)(a) Taxpayers making a contribution to the Oregon Production Investment Fund and wishing to receive a tax credit must submit the contribution, together with an application for tax credit, to the Oregon Film and Video Office, in care of the Oregon Economic and Community Development Department. The contribution need not accompany the application to the extent the taxpayer is only requesting a reservation of tax credits for future issuance with respect to future committed contributions, as provided in these administrative rules.

(b) Contributions may be made by check or wire transfer only.

(2) Availability of tax credits is determined at the time the contributed funds have cleared the contributor’s account, not on the date a check or visa payment is written or received by the Oregon Film Office or Oregon Economic and Community Development Department.

(3) The Oregon Film and Video Office shall make tax credit application forms available to taxpayers in hard copy and electronic formats and taxpayers may submit applications and contributions either in hard copy format or electronically through the Oregon Film and Video Office website.

(4) After approval of a taxpayer’s application for a tax credit, the Film and Video Office shall issue to the tax payer a tax credit certificate for the tax year during which the qualifying contribution was received.

(a) The Oregon Film and Video Office shall not issue a tax credit certificate to the contributing taxpayer until the Oregon Economic and Community Development Department has verified the amount of contribution.

(b) Tax credit certificates for qualifying contributions made between January 1, 2005 and June 30, 2005, shall be issued after July 1, 2005.

(c) Tax credit certificates for qualifying contributions made on or after July 1, 2005 shall be issued within 45 days of the Oregon Film and Video Office’s receipt of verification of the qualifying contribution from the Oregon Economic and Community Development Department.

(5) The amount of a qualifying contribution shall be 90% of the amount of tax credit issued with respect to that contribution.

(6) The tax credit certificates issued during a single State of Oregon fiscal year may not evidence more than \$1 million of tax credits, in aggregate.

(7) If at the time an application for tax credit is considered, the Oregon Film and Video Office has already issued or reserved tax credits totaling \$1 million for the fiscal year in which the contribution submitted with the application is received, the Oregon Film and Video Office will deny the application.

(8) If at the time an application for tax credit is considered, the Oregon Film and Video office has already issued or reserved tax credits that, when added to the tax credits that would be issued if the application were approved, would total more than \$1 million for the fiscal year in which the contribution submitted with the application is received, the Oregon Film and Video Office may either deny the application in full or approve the application in an amount necessary to bring the total tax credits issued or reserved to \$1 million for the fiscal year in which the contribution is received and deny the remainder of the application.

(9) If the Film and Video Office denies an application for a tax credit in full or in part, it shall notify the taxpayer applicant of the denial in writing within 45 days of the denial.

(10) A taxpayer who receives notice of denial of an application for tax credit may request, in writing and within 90 days after its receipt of the notice of denial, a refund of that portion of its contribution, actually received by the Film and Video Office, with respect to which the Film and Video Office did not issue a tax credit certificate. The Film and Video Office shall issue the refund within 60 days after its receipt of the refund request.

(11) In its application, a taxpayer may, in addition to or in lieu of applying for immediate issuance of a tax credit, request that the Oregon Film and Video Office reserve tax credits for future issuance based on future contributions committed by the taxpayer. The Oregon Film and Video office may approve, approve in part and deny in part, or deny tax credit reservation requests in its discretion. In determining whether to

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approve, approve in part and deny in part, or deny a tax credit reservation request, the Film and Video Office will consider the following factors:

(a) The current uncommitted balance in the Oregon Production Investment Fund;

(b) The amount of tax credits then available for issuance for the fiscal year with respect to which the reservation is requested;

(c) The number of pending applications for tax credits;

(d) The anticipated future demand for tax credits for the fiscal year with respect to which the reservation is requested.

(e) The number of tax credits the taxpayer is requesting the Film and Video Office to reserve.

(f) The length of time between the approval of the reservation and the anticipated receipt of the contributions with respect to the reserved tax credits;

(g) Such other factors as the Film and Video office considers appropriate in the particular circumstance in order to further the purposes of the Oregon Production Investment Fund tax credits.

(12) The Film and Video Office shall notify a taxpayer requesting a tax credit reservation of the approval, approval in part and denial in part, or denial of the request within 45 days after the Film and Video Office's receipt of the request. If the reservation request is approved in whole or in part, the Film and Video Office shall reserve tax credits for future issuance consistent with that approval.

(13) A taxpayer with reserved tax credits must submit to the Film and Video Office sufficient contributions to support tax credits reserved for issuance during a particular fiscal year, no later than the date set forth in the Film and Video Office's notice of reservation approval. Contributions must be submitted to the Film and Video Office in care of the Oregon Economic and Community Development Department. If the contributions necessary to support issuance of reserved tax credits are not received by the applicable deadline, the reservation of those tax credits and the reservations of all other tax credits for that taxpayer shall automatically expire and those tax credits shall no longer be considered reserved tax credits and shall become immediately available for issuance to or reservation by other taxpayers in accordance with these administrative rules.

(14) No tax credits or tax credit certificates shall be issued with respect to reserved tax credits until the Film and Video Office receives sufficient contributions to support issuance of tax credits and tax credit certificates with respect to the reserved tax credits. The Film and Video Office shall issue tax credit certificates to the taxpayer with respect to reserved tax credits within 45 days after the Film and Video Office's receipt of verification from the Oregon Economic and Community Development Department of receipt of sufficient contributions to support issuance of the reserved tax credits.

Stat. Auth.: ORS 284.335 & 315.514

Stats. Implemented: ORS 315.514

Hist.: FVO 4-2004, f. & cert. ef. 11-26-04; FVO 3-2006, f. & cert. ef. 11-17-06; FVO 2-2008, f. & cert. ef. 6-27-08

Oregon Housing and Community Services Chapter 813

Rule Caption: Adds eligibility and the application process for the Housing Preservation Community Incentive Fund.

Adm. Order No.: OHCS 6-2008

Filed with Sec. of State: 6-23-2008

Certified to be Effective: 6-23-08

Notice Publication Date: 6-1-2008

Rules Adopted: 813-140-0096

Rules Amended: 813-140-0010, 813-140-0050, 813-140-0090

Subject: 813-140-0010 Adds terms and definitions for the Housing Preservation Community Incentive Fund. Incorporates changes such as alphabetizing the terms and definitions.

813-140-0050 Removes a project listed on the Oregon Economic and Community Development's Needs and Issues Inventory as an eligible project.

813-140-0090 Adds Housing Preservation Community Incentive Fund loans as a loan that the Department may make. Establishes the interest rate and terms.

813-140-0096 Establishes the application process for participating in the Housing Preservation Community Incentive Fund.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-140-0010

Definitions

All terms used in OAR chapter 813, division 140, unless otherwise specifically defined herein have the meanings given in ORS 458.705

through 458.740. As used in OAR chapter 813, division 140, unless the context indicates otherwise:

(1) "Board" means the Community Development Incentive Advisory Board established pursuant to ORS 458.710.

(2) "Economic Revitalization Team" means the program of agency cooperation by the Governor's Office to coordinate and streamline state policies, programs and procedures and provide coordinated state agency assistance to local governments. These agencies are: Economic and Community Development Department, Department of Environmental Quality, Oregon Housing and Community Services Department, Department of Land Conservation and Development, and Oregon Department of Transportation, Department of State Lands, the Department of Agriculture and the Department of Business and Consumer Services. "Regional Economic Revitalization Team" means a regional team comprised of one regional employee with each of the agencies listed above.

(3) "Fund" or "Incentive Fund" means the Community Development Incentive Project Fund.

(4) "Gap Financing" means financing provided by the Fund when other state or private financing sources are inadequate or unavailable to finance a development project.

(5) "Housing Preservation Community Incentive Fund" means a program that provides grants and/or loans to preserve affordable housing developments financed presently or previously by OHCS that have Section 8 project-based rental assistance contracts which have been renewed or will be renewed.

(6) "Program Overview" means a publication available from the Department setting forth general guidelines and information about the program and application process.

(7) "Rural Community" and "Rural Service Center," means an unincorporated community which consists of permanent residential dwellings, and commercial, industrial or (in the case of a Rural Community) public uses to the community, the surrounding rural area, or to persons traveling through the area.

(8) "Six Budget Principals" means those principles stated in Governor Kulongoski's budget document presented in 2004 for the 2005/2007 Legislative Session to grow Oregon's economy and ensure that all Oregon communities — large and small, urban and rural, survive. Those principals are:

(a) Provide our children and adults with the educational opportunities they need to succeed today and in the future;

(b) Take care of our most vulnerable citizens;

(c) Create family-wage jobs for Oregonians;

(d) Maintain the high quality of life we enjoy in Oregon;

(e) Ensure that our citizens are safe in their homes and in their communities, and

(f) Provide for a safe, efficient and accountable state government.

(9) "Small Community Incentive Fund" means a program that provides loans and grants of \$80,000 or less for development projects, meet the criteria of the Incentive Fund program.

(10) "Urban Unincorporated Community," means an unincorporated community which has at least 150 permanent residential dwelling units, contains a mixture of land uses, and includes areas served by a community sewer system and water system.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06; OHCS 17-2006, f. & cert. ef. 9-15-06; OHCS 15-2007(Temp), f. & cert. ef. 12-18-07 thru 6-14-08; OHCS 6-2008, f. & cert. ef. 6-23-08

813-140-0050

Eligible Applicants and Eligible Projects

(1) Eligible applicants include local governments and nonprofit and for-profit organizations.

(2) To be eligible for funding, a proposed project must meet the following criteria:

(a) The project must be located within the urban growth boundary of an incorporated city in this state, or in an Urban Unincorporated Community, Rural Community, or Rural Service Center that is served by a community sewer system and/or water system.

(b) The project must achieve at least one of the following three main purposes found in ORS 458.725:

(A) Promoting affordable housing near jobs or transit, developments near jobs and transportation;

(B) Revitalizing downtowns and community centers; and

(C) Rebuilding rural and distressed economies.

(c) The project must demonstrate financial feasibility and soundness based on cash flow projections or documentation submitted with the application.

(d) The project must promote achievement of at least one of the Governor's "Six Budget Principles."

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(e) The project must comply with local comprehensive plans and land use ordinances or other regional or local plans.

(f) The project sponsor must demonstrate capacity (including capacity provided by outside consultants or developers) to fully implement the project as documented in application materials.

(g) The project must be locally supported and serve to further the community's goals related to livability and growth.

(h) The for-profit developer that is or will be the owner of the project must demonstrate investment or equity in the project.

(3) Eligible projects include, but are not limited to, a development project that has joint public and private sponsorship and/or ownership.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06; OHCS 17-2006, f. & cert. ef. 9-15-06; OHCS 15-2007(Temp), f. & cert. ef. 12-18-07 thru 6-14-08; OHCS 6-2008, f. & cert. ef. 6-23-08

813-140-0090

Lending Criteria

(1) The Department's lending criteria allows the Fund to create quality development patterns, produce a sound loan portfolio and create a sustainable loan fund.

(2) The Department shall permit the assumption of an appropriate level of risk, maintain a reserve for losses, and provide for the periodic monitoring of reserve adequacy as follows:

(a) An applicant for a loan shall demonstrate an ability to repay the debt through forma and other documentation submitted with the application. When applicable, the Department may offer a combination of grants and loans as well as a combination of loan products and terms, as it, in its sole discretion, deems appropriate to ensure repayment.

(b) A loan may be for an income-producing project or for a project in an urban renewal district with available tax increment financing.

(c) A loan may be subordinate to other loans both in terms of payment and lien securing repayment.

(3) The Department may make the following types of loans:

(a) Predevelopment loans for projects that are in the early stage. The purpose of these loans is to finance eligible predevelopment expenses such as architectural, engineering, environmental studies, purchase of options or other eligible expenses as determined by the department. A predevelopment loan shall have maximum term of 12 months and shall be 100% secured by collateral acceptable to the Department. The borrower shall pay a loan fee of 1% of the principal amount of the loan for the regular, or "large" Community Incentive Fund. There is no fee for Small Community Incentive Fund pre-development loan borrowers.

(b) Short-term loans having terms not to exceed 5 years. These loans shall accrue interest at the rate of 1% per annum for the "large" program and 3% for the Small Community Incentive Fund program. Both shall require minimum annual interest payments.

(c) The "large" Community Incentive Fund can offer long-term loans having terms exceeding 5 years, but not exceeding 15 years. These loans shall accrue interest at a rate of 3% per annum and shall require minimum annual interest payments. The Small Community Incentive Fund does not offer long-term loans.

(d) For existing owners remaining in the program, the Housing Preservation Community Incentive Fund can offer 2 percent interest loans with a maximum term of 20 years. Other loans will be at an interest rate and term determined by the Department through project underwriting to best meet the financial viability of the project.

(4) A borrower shall execute such agreements, instruments and other documents that are required by the Department and that are in form and substance satisfactory to the Department. These documents may contain terms and provisions regarding required insurance coverage, loss reserve and periodic reporting requirement, financial ratios, escrow payments, late charges, defaults, priority of liens, and such other matters as the Department deems prudent or appropriate.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06; OHCS 17-2006, f. & cert. ef. 9-15-06; OHCS 15-2007(Temp), f. & cert. ef. 12-18-07 thru 6-14-08; OHCS 6-2008, f. & cert. ef. 6-23-08

813-140-0096

Application Process for Housing Preservation Community Incentive Fund

(1) All housing projects financed by OHCS with HUD Section 8 rental assistance contracts which have been renewed or will be renewed are eligible to apply.

(2) Applicants must obtain application materials directly from the Department.

(3) Applicants must submit their applications to the Department contact person listed on application materials.

(4) The Department will analyze the application and determine the appropriate mix of funding sources including tax credits, credit equity, grants and/or loans.

(5) The applications that, in the judgment of the Department, meet program requirements (see Program Overview and application materials), will be summarized for submission to the Advisory Board for their review and recommendation.

(6) Projects will be selected for financing, which in the judgment of the Board (as evidenced by its recommendations to the Director) and the Director achieve the requirements of the Housing Preservation Incentive Fund based on the criteria outlined in application materials and Program Overview.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 6-2008, f. & cert. ef. 6-23-08

Oregon Medical Board Chapter 847

Rule Caption: Removes requirement to examine the patient in person prior to practicing medicine across state lines.

Adm. Order No.: BME 14-2008(Temp)

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 7-15-08 thru 1-9-09

Notice Publication Date:

Rules Amended: 847-025-0000

Subject: Proposed rule removes requirement to examine the patient in person prior to practicing medicine across state lines.

Rules Coordinator: Diana M. Dolstra—(971) 673-2713

847-025-0000

Preamble

(1) A physician granted a license to practice medicine across state lines is subject to all the provisions of the Medical Practice Act (ORS Chapter 677), and to all the administrative rules of the Oregon Medical Board.

(2) A physician granted a license to practice medicine across state lines has the same duties and responsibilities and is subject to the same penalties and sanctions as any other physician licensed under ORS Chapter 677, including but not limited to the following:

(a) The physician shall establish a physician-patient relationship;

(b) The physician shall make a judgment based on some type of objective criteria upon which to diagnose, treat, correct or prescribe;

(c) The physician shall engage in all necessary practices that are in the best interest of the patient; and

(d) The physician shall refrain from writing prescriptions for medication resulting only from a sale or consultation over the Internet.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.135, 677.137, 677.139, 677.141

Hist.: BME 10-2000, f. & cert. ef. 7-27-00; BME 14-2008(Temp), f. & cert. ef. 7-15-08 thru 1-9-09

Oregon State Lottery Chapter 177

Rule Caption: Update Division 10 General Provisions Rules, make housekeeping changes, amend unclaimed prize and trademark rules.

Adm. Order No.: LOTT 3-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Amended: 177-010-0003, 177-010-0007, 177-010-0025, 177-010-0045, 177-010-0050, 177-010-0080, 177-010-0085, 177-010-0090, 177-010-0110, 177-010-0120

Subject: The Oregon State Lottery has amended the above referenced administrative rules. Most of the amendments are for general housekeeping purposes, including grammatical changes, the addition of captions, and clarification of meaning.

OAR 177-010-0007 was amended to specify when rulemaking notices will be delivered to the Capitol Press Room. OAR 177-010-0085 was amended to authorize the Director to establish a shorter prize claim period in any Lottery game. OAR 177-010-0110 was amended to clarify and update requirements and procedures for the public display, use, or publication of Lottery trademarks and service marks.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

ADMINISTRATIVE RULES

177-010-0003

Definitions

(1) “**Business day**” means the period beginning at 5 a.m. of a calendar day and ending at 4:59 a.m. on the morning of the next calendar day.

(2) “**Business week**” means the period beginning at 5 a.m. on a Sunday and ending at 4:59 a.m. the following Sunday morning.

(3) “**Business year**” means the period beginning at 5 a.m. on the Sunday immediately following the last Saturday in June, and ending at the end of the business day of the last Saturday of the following June.

(4) “**Commissioner**” has that definition as defined in ORS 461.010(2).

(5) “**Director**” has that definition as defined in ORS 461.010(3).

(6) “**Drawing coordinator**” means the Lottery employee designated by the Assistant Director for Security, subject to the approval of the Director, to develop and implement procedures for conducting drawings.

(7) “**Immediate family**” and “**family member**” mean a natural person’s spouse, child, brother, sister, or parent by blood or adoption.

(8) “**Lottery**” or “**State Lottery**” has that definition as defined in ORS 461.010(1).

(9) “**Lottery Commission**” or “**Commission**” has that definition as defined in ORS 461.010(4).

(10) “**Lottery contract**” means any contract entered into by the Lottery for the purchase, lease, or sale of goods or services.

(11) “**Lottery contractor**” or “**contractor**” has that definition as defined in ORS 461.010(9).

(12) “**Lottery game**” or “**game**” has that definition as defined in ORS 461.010(5).

(13) “**Lottery game retailer**” or “**retailer**” has that definition as defined in ORS 461.010(7).

(14) “**Lottery vendor**” or “**vendor**” has that definition as defined in ORS 461.010(8).

(15) “**Person**” has that definition as defined in ORS 461.010(6).

(16) “**Prize**” means any award of economic value, monetary or otherwise, that may be distributed to a Lottery player for submitting a valid claim based on a winning Lottery ticket or share.

(17) “**Retailer contract**” means any written contract entered into by the Lottery with a retailer for selling Lottery tickets or shares to the public.

(18) “**Share**” means an opportunity to win a prize in a Lottery game that does not use certificates or tokens, such as in Video LotterySM games.

(19) “**Ticket**” means a certificate or token of the opportunity to win a prize in a Lottery game.

(20) “**Traditional lottery games**” means all lottery games offered by the Oregon State Lottery, other than Video LotterySM games, and includes BreakopensSM, Scratch-itsSM, and On-Line games.

(21) “**Unclaimed prize**” means any prize offered in a Lottery game which has not been submitted to the Lottery for validation and prize payment within the specified prize claim period and for which the Lottery has data or evidence that the ticket or share was sold or distributed to the public.

(22) “**Video LotterySM terminal**” means an electrical, electronic, or electro-mechanical device, component, or terminal, which may display a game or other graphics through the use of a video display screen, which is available for consumer play upon payment of the necessary or appropriate consideration, with winners determined by the application of the element of chance and the possible prizes displayed on the device.

(23) “**Winner claim form**” means a form provided by the Lottery to a player for the purpose of claiming a prize.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 192.440, 461.020, 461.100, 461.120, 461.170, 461.213, 461.215, 461.230, 461.240, 461.250, 461.260, 461.300, 461.310, 461.500 & 461.510

Hist.: LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0007

Notice of Proposed Rules

Prior to the adoption, amendment, or repeal of any rule, other than a temporary rule which is adopted in accordance with ORS 183.335(5), the Lottery Director shall give notice of the intended action:

(1) **SOS Bulletin:** In the Secretary of State’s Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the intended action;

(2) **Mailing:** By mailing, electronic mailing, or delivering a copy of the notice at least 28 days before the effective date of the intended action to persons on the Lottery Director’s mailing list established pursuant to ORS 183.335(8) and at least 49 days before the effective date of the intended action to the persons specified in ORS 183.335(15);

(3) **Press Room:** By delivering sufficient copies of the notice to the Capitol Press Room to provide one copy to each member of the press that maintains a mail receptacle there at least 28 days before the effective date of the intended action; and

(4) **Commission Agenda:** By listing any rule to be adopted, amended, or repealed on the agenda for the Commission’s monthly meeting.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.120(2)

Hist.: LC 5-1990, f. & cert. ef. 4-3-90; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0025

Director of the Oregon State Lottery

(1) **General:** The Director shall implement and execute the rules and policies adopted by the Commission, and may adopt such procedures as the Director may deem appropriate, to promote and insure the integrity, security, honesty, fairness, and efficient administration of the Lottery.

(2) **Assistant Directors:** The Commission delegates the authority to the Director to discipline, and/or terminate, with or without cause, any or all of the assistant directors at any time. The decision of the Director to discipline and/or terminate an assistant director is final.

(3) **Personnel Policies and Procedures:** Except for approving the salaries of the Director and the assistant directors, including cost-of-living adjustments, the Director shall have the authority to establish and implement personnel policies and procedures pertaining to the employment, termination, and compensation of all Lottery staff. Such policies and procedures shall conform to generally accepted personnel practices based upon merit principles.

(4) **Temporary Administrative Rules:** The Director shall have the authority to adopt temporary administrative rules in accordance with the procedures set forth in ORS 183.335(5) and (6) upon the Director’s signature.

(5) **Miscellaneous:** The duties and responsibilities of operating a lottery which are not otherwise specified in law, including, but not limited to, statutes and administrative rules, are reserved to the Director subject to review and approval by the Commission.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.150

Hist.: SLC 13-1986(Temp), f. & ef. 6-13-86; SLC 19-1986, f. & ef. 7-29-86; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0045

Contingency Reserve

The money allotted to the Lottery’s contingency reserve fund may include amounts retained to fund specific future expenses or may be for undesignated purposes. The Lottery shall not include contingency reserve expenditures in its calculation of the total annual revenues allocated for administrative expenses.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.510

Hist.: SLC 8-1985, f. & ef. 6-21-85; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0050

Merchandise Prizes

In the exercise of the Director’s discretion, the Director may pay the cash value of any merchandise prize in lieu of that prize. The cash value of a merchandise prize is the amount that the Lottery paid for the merchandise.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.230

Hist.: SLC 9-1986, f. & ef. 5-28-86; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0080

Sale of Tickets and Shares

(1) **Sales by Retailers:** The Director shall contract with retailers for the sale of Lottery tickets and shares. The contract shall include the terms and conditions and incorporate by reference the rules applicable to the sale of all Lottery tickets and shares sold by the retailer.

(2) **Sales by the Lottery:** The Director may develop procedures for the sale of Lottery tickets and shares directly to the public. The procedures shall contain measures to ensure the accountability and security of all tickets and shares sold to the public by Lottery employees.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.260

Hist.: LC 12-1990, f. & cert. ef. 10-2-90; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0085

Unclaimed Prize Money

(1) A prize not validly claimed within the period specified for claiming a prize in any lottery game shall remain the property of the Commission and shall be allocated to the benefit of the public purpose. The Lottery shall transfer unclaimed prize money when it transfers proceeds allocated to the public purpose.

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(2) The Commission delegates to the Director or the Director's designee the authority to set a time period that is shorter than one year to claim prizes in any Lottery game.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250
Hist.: LC 2-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0090

Child Support Validation Check

The Lottery will use the following procedures as part of the validation process before paying any portion of a Lottery prize in excess of \$600:

(1) **Database:** Lottery information systems personnel shall work with the Division of Child Support of the Department of Justice (DOJ) to maintain a current database on the Lottery's central computer system containing the names and social security numbers of obligors who are delinquent in paying child support obligations.

(2) **Searching the Database:** The Lottery shall enter a prize claimant's name, address, date-of-birth, and social security number into the Lottery's central computer system. The computer shall search the database containing the names of the delinquent child support obligors for a possible match.

(3) **30 Day Hold:** When a claimant is listed in the database and a possible match is found, the Lottery will confirm the match with DOJ. If DOJ responds with a confirmation that the claimant is delinquent on child support payments, the Lottery will place a 30-day hold on any payment to the claimant pending initiation of garnishment proceedings. The Lottery will inform the claimant of the hold, immediately notify DOJ by telephone that the Lottery has placed the hold on the prize payment, and transmit a facsimile copy of supporting information to DOJ.

(4) **Garnishment:** If a garnishment proceeding is initiated within the 30-day hold period, the Lottery shall make payment to DOJ when the garnishment is received. If the prize claim exceeds the amount of the garnishment, the Lottery will pay the claimant the balance remaining after deduction of the garnishment and applicable taxes. If the garnishment exceeds the amount of the prize claim, the Lottery will inform the claimant that the entire amount of the prize claim was used to respond to the garnishment.

(5) **Payment of Prize:** If a garnishment proceeding is not initiated within the 30-day hold period, the Lottery will make payment on the prize to the claimant at the end of the 30 day hold period or when DOJ notifies the Lottery that a garnishment proceeding will not be initiated, whichever is sooner.

(6) **Voluntary Release:** Nothing in this section is intended to prevent a prize claimant from voluntarily releasing payment of all or any portion of the claimant's prize towards payment of the claimant's delinquent child support obligations.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.715
Hist.: LC 6-1992, f. & cert. ef. 6-23-92; LOTT 8-2002(Temp), f. & cert. ef. 7-15-02 thru 1-3-03; LOTT 20-2002, f. & cert. ef. 9-30-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0110

Lottery Trade or Service Marks

(1) **Public Display, Use, or Publication of Trademarks and Service Marks:** The Lottery's trademarks and service marks include, but are not limited to, the Lottery's name and logo; game names, logos, and taglines; and licensed game names and logos that the Lottery has contractual authority to use. The public display, publication, or other use of the Lottery's trademarks and service marks is permitted only after the Director or the Director's designee:

(a) Provides written approval of a request for the display, publication, or other use; or

(b) Enters into a license agreement with the requestor for the display, publication, or other use.

(2) **Request Requirements:** All requests for display, publication, or other use of the Lottery's trademarks and service marks must be in writing and must include the following:

(a) A sample showing the proposed use of the trademark or service mark in a display, publication, or other use; and

(b) An explanation of how and where the trademark or service mark will be displayed, published, or otherwise used.

(3) **Director's Approval:** The Director or the Director's designee has sole and exclusive discretion whether or not to approve a request and to determine the conditions applying to use of the trademark or service mark. The Director or the Director's designee may require the requestor to enter into a licensing agreement before use of a trademark or service mark is authorized.

(4) **Rights:** This rule shall not be construed to grant or create any right to display, publish, or otherwise use, in any manner, in whole or in part, any of the Lottery's trademarks or service marks. The Lottery may take any

action that the Lottery deems necessary to enforce its rights in its trademarks and service marks.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.150
Hist.: LC 4-1994, f. 3-31-94, cert. ef. 4-1-94; Administrative Correction 4-15-98; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0120

Display and Demonstration of a Trade Show Device at a Trade Show

(1) **Definition:** For the purposes of this rule, "Trade show device" means a gaming device that would otherwise be a gray machine as described in ORS 167.117(9) or a slot machine as described in 167.117(20) except that the device is authorized for display or demonstration purposes at a trade show and the device is displayed and demonstrated by a manufacturer or manufacturer's representative as an example of a model that is currently in production for sale or is scheduled to be in production for sale by the manufacturer.

(2) **Trade Show Display:** A trade show device approved for display and demonstration at a trade show:

(a) Cannot be used for actual wagering. Any device that accepts any consideration is not authorized under this rule.

(b) Cannot be sold directly from the site of the trade show or while in transit to or from the trade show.

(c) Must have the coin or bill acceptor removed or physically restricted from use so that wagering is not possible.

(d) Must have a sign posted in close proximity to the device that contains the phrase, "**No one under 21 years of age is allowed to operate this machine.**" A vendor displaying and demonstrating trade show devices must ensure that minors under the age of 21 are not allowed to operate the device.

(3) **Limitations:** For purposes of this rule, a trade show cannot be held at a location or in a manner in which the Oregon State Police Lottery Security Section is encumbered from ensuring compliance with applicable law. For example, a trade show cannot be held in a mobile demonstration van or be conducted simultaneously at multiple locations.

(4) **Application:** A vendor participating in a trade show must complete, in its entirety, and file an application with the Director for authorization to display, demonstrate, and transport a trade show device at a trade show. The application shall include, but not be limited to:

(a) The full name, address, and telephone number of both the business and the individual initiating the request to display and demonstrate such a device at a trade show;

(b) The title, location, and dates of the trade show;

(c) The full name, address, and telephone number of the sponsor or organizer of the trade show;

(d) The manufacturer of each device;

(e) The serial number of each device;

(f) The model of each device;

(g) The schedule of transport of such a device;

(h) The specific address and location of any intermediary storage sites for the device before or after the trade show; and

(i) The name, address, and telephone number of a person who can be contacted if questions arise regarding any aspect of the authorization, the devices, or the trade show.

(5) **Approval:** The Director may approve, in writing, an application to display, demonstrate, and transport a trade show device submitted under section (4) upon finding that each device identified in the application is a trade show device and that the applicant will use the trade show device solely for display and demonstration purposes at a trade show that is not open to the public and where minors under the age of 21 are prohibited from operating any trade show device.

(6) **Approval to Accompany Machine:** Upon approval by the Director, a copy of the Director's approval to display, demonstrate, and transport a trade show device must accompany the device while in transit to or from the trade show and while the device is at the trade show.

(7) **Transport:** A trade show device scheduled to be displayed or demonstrated at a trade show must be transported as described in the approval to display, demonstrate, and transport the device. Any variation in the number, type, or serial number of devices to be displayed and demonstrated at a trade show, or of the schedule of the transport of the devices to or from a trade show contained in the authorization shall be immediately reported to the Lottery following notification procedures described in the authorization.

(8) **Inspection:** Trade show devices displayed or demonstrated at a trade show must be available for inspection by the Oregon State Police Lottery Security Section to assure compliance with applicable law.

(9) **Confiscation:** A device displayed, demonstrated, transported, or otherwise possessed in violation of this rule or any statute is subject to confiscation by law enforcement officers and may be forfeited and destroyed.

Stat. Auth.: OR Const. Art. XV, Sec. 4 & ORS 461
Stats. Implemented: OL 1999, Ch. 193 & ORS 461.215

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Hist.: LOTT 12-1999(Temp), f. & cert. ef. 12-27-99 thru 6-20-00; LOTT 3-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08

Rule Caption: Update reference Attorney General's Model Rules; Adopt Model Rule Confidentiality and Inadmissibility of Mediation Communications.

Adm. Order No.: LOTT 4-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 177-010-0011

Rules Amended: 177-010-0009

Subject: The Oregon State Lottery amended OAR 177-010-0009 to adopt the Attorney General's Model Rules of Procedure for Rulemaking, Declaratory Rulings, and Collaborative Dispute Resolution in effect on June 30, 2008, and adopted OAR 177-010-0011 regarding the confidentiality and inadmissibility of mediation communications, which is also a model rule promulgated by the Oregon Attorney General.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-010-0009

Model Rules of Procedure

Pursuant to the Oregon Administrative Procedures Act, the Oregon State Lottery adopts the following Attorney General Model Rules of Procedure, OAR chapter 137, in effect on June 30, 2008.

- (1) Division 1 Model Rules for Rulemaking.
- (2) Division 2 Model Rules for Agency Declaratory Rulings.
- (3) Division 5 Collaborative Dispute Resolution Model Rules.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Lottery Commission.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.120(2)

Hist.: LC 5-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 4-2008, f. 6-30-08, cert. ef. 7-1-08

177-010-0011

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded:** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator:** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial, or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications:** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement:** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "Agreement to Mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 177-010-0011(7) and this agreement. This agreement relates to the following mediation:

- a) _____
(Identify the mediation to which this agreement applies)
- b) To the extent authorized by OAR 177-010-0011(7), mediation communications in this mediation are: (check one or more)

_____ Confidential and may not be disclosed to any other person.

_____ Not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding.

_____ Not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.

c) _____

Name of Agency

Signature of Agency's authorized representative _____ Date _____

(when Agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

d) _____

Name of party to the mediation

Signature of party's authorized representative _____ Date _____

e) _____

Name of party to the mediation

Signature of party's authorized representative _____ Date _____

(9) Exceptions to Confidentiality and Inadmissibility:

(a) Any statements, memoranda, work products, documents, and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person

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for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial, or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training, or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule

may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: LOTT 4-2008, f. 6-30-08, cert. ef. 7-1-08

Rule Caption: Update Division 46 Lottery Games General Operating Rules, make housekeeping changes, and clarify drawing requirements.

Adm. Order No.: LOTT 5-2008

Filed with Sec. of State: 6-30-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 6-1-2008

Rules Adopted: 177-046-0015

Rules Amended: 177-046-0010, 177-046-0020, 177-046-0030, 177-046-0040, 177-046-0050, 177-046-0060, 177-046-0070, 177-046-0080, 177-046-0090, 177-046-0100, 177-046-0120, 177-046-0130, 177-046-0140, 177-046-0150, 177-046-0160, 177-046-0170

Subject: The Oregon State Lottery has amended the above references administrative rules. Most of the amendments are for general housekeeping purposes, including grammatical changes, the addition of captions, and clarification of meaning. OAR 177-046-0080 was amended to clarify and update Lottery procedures and auditing requirements for drawings, including distinguishing between the requirements for electronic drawings and manual drawings. OAR 177-046-0015 is adopted to set forth definitions generally applicable to this Division.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-046-0010

Purpose

The purpose of Division 46 is to set forth standardized rule provisions that are applicable to Lottery games (excluding Video LotterySM games) offered by the Lottery. Each type of game is set forth in a specific division containing rules unique to that type of game. In the event of a conflict between a provision contained in this Division and the specific rule Division, the provision in the specific rule Division controls.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0015

Definitions

For the purposes of Division 46, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) **"Drawing"** means the procedure whereby the Lottery selects the winner or the winning combination in accordance with the rules of the game.

(2) **"Electronic drawing"** means any drawing that involves the use of a random number generator or other computer-driven or computer-assisted device to determine winners or winning combinations, and manual interaction is incidental to the selection process.

(3) **"Electronic equipment"** includes any computer-driven or computer-assisted device used by the Lottery for the purpose of determining winners or winning combinations, including, but not limited to, devices used by the Lottery's central gaming system for the Lottery's On-Line games, or for the Lottery's periodic internet entry, raffle, or promotional games.

(4) **"Manual drawing"** means any drawing that does not involve the use of a random number generator or any other computer-driven or computer-assisted device to determine winners or winning combinations, and manual interaction is primary to the selection process.

(5) **"Manual equipment"** includes any mechanical equipment or non-electronic method used by the Lottery for the purpose of determining winners or winning combinations, including, but not limited to, Lottery's periodic raffle games.

(6) **"Random number generator"** means a computer-driven electronic device capable of producing numbers at random.

Stat. Auth.: ORS 461

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0020

Sale of Lottery Tickets and Shares

(1) **General:** The Director may contract with retailers for the sale of Lottery tickets and shares. Only a retailer under contract with the Lottery may sell Lottery tickets or shares. Nothing in this section shall be construed

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to prevent a person who lawfully purchases or possesses a Lottery ticket or share from making a gift of such ticket or share to another.

(2) **Retailer Sales Locations:** Unless authorized by the Lottery, Lottery tickets or shares may only be sold by a Lottery retailer at the location listed in the retailer contract.

(3) **Lottery Sales:** The Lottery may designate its agents or employees to sell Lottery tickets or shares directly to the public, either in person or through electronic means.

(4) **Sales Are Final:** Unless otherwise provided in OAR Chapter 177, the sale of all Lottery tickets and shares is final. A player may not return a Lottery ticket or share for a refund of the purchase price or exchange unless the specific game rule provides otherwise. The Lottery is not liable for Lottery tickets or shares that are purchased in error.

(5) **Distribution:** The Director is authorized to arrange for the direct distribution of on-line terminals, ticket stock, and supplies shipped directly from the manufacturer or supplier to an authorized retailer.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0030

Stolen, Destroyed, or Damaged Lottery Tickets or Shares

A Lottery retailer may receive credit for stolen, defective, damaged, or destroyed Lottery tickets or shares only as specified in the specific game rule or in the Lottery retailer contract.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0040

Retail Price Discounts and Retailer Promotions

(1) **General:** The Lottery may offer discounts from the retail sale price of Lottery tickets or shares to the public by any method approved by the Director. The Director will communicate or distribute information regarding discounts by using methods designed to reach the public. These methods may include, but are not limited to, the use of direct mail, newspaper advertising, or by offering coupons at Lottery offices or retail locations.

(2) **Retailer Promotions:** The Director may provide written authorization for a Lottery retailer to engage in a promotion in which the retailer gives one or more Lottery tickets or shares to the retailer's customers in exchange for the purchase of goods or services.

(a) A Lottery retailer seeking authorization to conduct such a promotion shall identify, to the degree required by the Director, the goods or services to be purchased by a customer in exchange for a Lottery ticket or share and the number and type of tickets or shares to be given to the customer in exchange.

(b) A Lottery retailer is not permitted to increase the price of goods or services offered for sale as a part of the promotion to recoup costs associated with the promotion.

(c) It is the policy of the Lottery to authorize a promotion described in this section only when the proposed promotion maintains the integrity, security, honesty, and fairness of the Lottery.

(d) Lottery tickets or shares given during an authorized promotion are considered and counted as a sale for the retail price established by the Lottery in the rules for each Lottery game.

(e) No promotion is authorized unless it complies with this rule.
Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0050

Accuracy of Tickets and Shares

It is the sole responsibility of a player to verify the accuracy of a Lottery ticket or share purchased by the player. The Lottery is not liable for any Lottery ticket or share purchased or printed in error. Specific Lottery game rules may provide for cancellation of a Lottery ticket or share under certain circumstances.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0060

Cancellation of Lottery Tickets and Shares

(1) **General:** Where a specific rule provides that the purchaser of a Lottery ticket or share may cancel the purchase, the following is the procedure for cancellation:

(a) To cancel a purchase of a Lottery ticket or share, the player must return it to the selling retailer on the day of purchase before wagers are dis-

abled prior to the first drawing or other winner determination time as applicable.

(b) The player shall receive a refund from the retailer equal to the purchase amount of the Lottery ticket or share.

(c) If a Lottery ticket or share cannot be cancelled because the Lottery's central computer system does not record the cancellation in a timely manner due to a mechanical or electronic transmission malfunction, credit may still be given to the retailer provided the following steps are taken:

(A) The retailer attempts to cancel the Lottery ticket or share before wagers are suspended and a computer record of the attempt is created.

(B) The retailer calls the Retailer Services Hotline and gives the Lottery ticket or share's identifying number to the operator, and

(C) The retailer mails the Lottery ticket or share to the Lottery within two weeks from the date of purchase.

(2) **Exchange Tickets or Shares:** Notwithstanding any other rule, exchange tickets or shares cannot be cancelled under any circumstances.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0070

Official Start of Each Lottery Game

The Director may publicly announce the game launch and start date of each new Lottery game to Lottery retailers by posting the information on the Lottery's official website, or by any other appropriate means. The Director may also announce the description of the game, the number and value of the prizes in the game, and the odds of winning those prizes.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0080

Drawings

(1) **Drawing Coordinator and Procedures:** Subject to the approval of the Director, the Lottery's Assistant Director for Security shall designate a Drawing Coordinator. Lottery drawings shall be conducted pursuant to the procedures developed by the Drawing Coordinator in consultation with the Assistant Director for Security and as approved by the Director. Drawing procedures shall include provisions for the substitution of back up drawing equipment or methods in the event primary drawing equipment malfunctions or fails for any reason and procedures for completing a drawing that is interrupted due to equipment malfunction or operator error.

(2) **Drawing Equipment:** The Lottery may use any type of equipment or method, including electronic or manual equipment and any variety of existing or future methods or equipment, for determining the winner or winning combination in any Lottery game that involves a drawing.

(3) **Electronic Equipment:** The Lottery shall ensure the security and integrity of any electronic drawing equipment used to determine a winner or winning combinations. Any electronic connections to this equipment must be made by a secure method. The Lottery shall test the equipment periodically or as needed to ensure proper operation and lack of tampering or fraud. The Lottery shall have its random number generators, or any other computer-driven or computer-assisted device used for a drawing, statistically analyzed, tested, and certified by an independent, qualified statistician for integrity.

(4) **Manual Equipment:** The Lottery shall ensure the security and integrity of any manual equipment used to determine a winner or winning combinations. Any manual equipment used by the Lottery to determine a winner or winning combinations must be inspected by an independent certified public accountant or the professional representative of an independent certified public accountancy organization and an employee or agent of the Lottery before and after the drawing. The drawing and such inspections must be recorded on video and audio tape. Any drawing using manual equipment must be witnessed by an independent certified public accountant or a professional representative of an independent certified public accountancy organization.

(5) **Random Number Generators:** The Lottery may use random number generators to determine winning numbers for Lottery games.

(6) **Security:** Subject to the approval of the Director, the Lottery's Assistant Director for Security shall establish procedures to ensure the physical security of the Lottery's drawing equipment and shall specify the individuals who shall have physical access to that equipment. Any random number generator, or any other computer-driven or computer-assisted device, used by the Lottery to determine winners or winning combinations shall be kept in a sealed enclosure within a secure area. Any person who enters the sealed enclosure must have permission from Lottery Security and be escorted by a Lottery Security Section officer or employee.

(7) **Drawing Errors:** If, during a game drawing, an equipment failure or operator error causes an interruption in the selection of numbers or sym-

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bols, the Drawing Coordinator will declare a technical difficulty. Any number drawn prior to the declaration of a technical difficulty will stand and be deemed official when verified by the Drawing Coordinator. The drawing will be completed as set forth in the Drawing Coordinator procedures.

(8) **Delay in Payment and Resolution:** The Director will delay payment of all prizes if any evidence exists or there are grounds for suspicion of equipment malfunction, tampering, or fraud. In such event, the Lottery will not pay any prize until the Lottery completes an investigation and the Director approves the drawing and authorizes payment. If the Director does not approve the drawing, it will be void and the Lottery will conduct another drawing to determine the winner or the winning combinations.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0090

Validation Requirements

(1) **General:** Each type of Lottery game rule may specify unique or additional requirements necessary for validation for that specific game.

(2) **Requirements:** In general, to be a valid Lottery ticket or share:

(a) The ticket or share must not be counterfeit or a forgery in whole or in part.

(b) The Lottery must have issued the ticket or share in an authorized manner.

(c) The ticket or share must not be altered, unreadable, reconstituted, or tampered with in any manner and must meet all of the Lottery's security requirements.

(d) The ticket or share must not appear on any list of omitted, inactive, missing, previously paid, or stolen tickets on file at the Lottery, and the Lottery's Instant Ticket System (ITS) must accept and validate the ticket or share as a winner.

(e) The ticket or share must not be blank or partially blank, misregistered, non-scratchable, or printed or produced in error.

(f) The ticket or share is subject to all additional confidential validation tests of the Lottery including validation through the Lottery's computer system.

(3) **Proof of Play:** A Lottery ticket or share is the only proof of a game play or plays and the submission of a winning ticket or share to the Lottery or an authorized retailer is the sole method of claiming a prize or prizes unless otherwise provided in OAR chapter 177. A play slip or a copy of a ticket or share has no pecuniary or prize value and does not constitute evidence of ticket or share purchase or otherwise represent an opportunity to win a prize.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0100

Ownership of Lottery Tickets and Shares

(1) **Bearer Instrument:** Except for a Lottery ticket or share claimed jointly in accordance with the provisions of OAR 177-046-0110(6) of this rule, until such time as a name of an individual or individuals is imprinted or placed upon a Lottery ticket or share in the area designated for "Name," the ticket or share is a bearer instrument and is owned by the bearer of the ticket or share. When a name or names is placed on the ticket or share in the designated place, the ticket or share ceases to be a bearer instrument and the individual whose name appears in that area is the owner of the ticket or share. Only a natural person may own a ticket or share and claim a prize.

(2) **Multiple Names:** Multiple individuals may jointly own, possess, and claim a prize as owners of a winning ticket. Multiple individuals hold the ticket as tenants in common. Multiple individuals may specify the percentage of ownership each person holds. Each person must hold \$1.00 of the prize at a minimum.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0120

Prizes Payable after Death

(1) **General:** A person is a deceased prize winner if that person dies after the Lottery validates a prize claim for that person but has not disbursed a prize or a portion of a prize to that person. The Director may rely on the presentment of certified copies of the court's appointment of a personal representative or other evidence of a person entitled to the payment of prize winnings when due and may make payment to the winner's estate once the Director is satisfied that such payment is lawful and proper.

(2) **Release Form:** For a deceased prize winner, the personal representative of the winner's estate, or all the parties listed on a beneficiary designation form if one is on file, must sign the Lottery's release form before payment of the prize or any remaining portions of the prize.

(3) **Court Petition:** The Director reserves the right to petition any court of competent jurisdiction to determine the proper payment of any prize winnings due to a deceased prize winner.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0130

Disclosure of Winners

(1) **General:** The Lottery may use the name, address, and likeness of a winner in any Lottery promotional campaign, advertisement, or press release. A winner consents to the use of the winner's name, address, and likeness for promotional campaigns, advertising, and publicity purposes by the Lottery and Lottery retailers. A winner who receives a prize or prize payment from the Lottery grants the Lottery, its agents, officers, employees, and representatives the right to use, publish in print or by means of the Internet, and reproduce the winner's name, address, physical likeness, photograph, portraits, statements made by the winner, and use audio sound clips and video or film footage of the winner for the purpose of promoting the Lottery and its games.

(2) **Person's Likeness:** If the Lottery, its agents, officers, employees, and representatives deem it suitable for advertising, promotional or publicity use, or press use, a winner further grants the Lottery the right to use and reproduce the winner's likeness in print either alone or in any combination with other persons. Examples of permitted uses include but are not limited to: Radio, television, newspapers, posters, billboards, commercials, magazines, print advertisements, and the Lottery web site.

(3) **Release:** Each winner releases the State of Oregon, its agents, officers, employees, and representatives, the Oregon Lottery, its Director, agents, officers, employees, and representatives from any liability arising out of any blurring, distortion, alteration, or use in composite form whether intentional or otherwise, that may occur, or be produced in the printing and production process towards the completion of any finished product. A winner waives any right to inspect or approve the finished products, whether it is for a promotional campaign, advertising, or publicity.

(4) **Limitation:** If Lottery uses the address of a winner, the address shall not contain the street or house number of the winner.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0140

Suspension of Play

(1) **Suspension of Drawings:** At the discretion of the Director, a Lottery drawing may be suspended.

(2) **Refund Options:** If the Director suspends a drawing after Lottery tickets or shares have been sold for that drawing, a player may receive a refund of the player's ticket or share price, or a replacement Lottery ticket or share from another Lottery game, or the Director may hold a replacement drawing at the Director's discretion.

(3) **Termination of Games:** A Lottery game may be discontinued at any time.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0150

Official End of Games and Last day to Claim a Prize or to Receive Credit for Unsold Tickets or Shares

(1) **General:** The Director shall announce the official ending date of a Lottery game and last day to claim a prize by use of any appropriate means, including, but not limited to, providing notice on the Lottery's official website or through Lottery retail sales sites unless specific game rules provide otherwise. The Director will calculate the last day to claim a prize by adding one calendar year to the ending date of the game. Prizes must be claimed by the close of business on the last day to claim prizes. In the event the final day of the one-year claim period falls on a weekend or an official Lottery holiday, the claim period will be extended to end at the close of the next Lottery business day.

(2) **Unsold Returns:** Where applicable, a retailer must return to the Lottery unsold tickets or shares for each game within one year of the official ending date of that game in order to receive credit from the Lottery as provided for in the retailer's contract. Upon the retailer's request and with the recommendation of the Assistant Director of Retail Operations, the Director may extend the one year time limit.

(3) **Limited Availability Merchandise:** From time to time, the Director may offer games or drawings having top tier prizes consisting of merchandise of limited availability. Since such prizes are randomly available among the game tickets or shares, it is not possible to tell when the final top tier prize is won and will be claimed until it actually is validated

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and claimed. For this reason, the Lottery may continue to sell such tickets or shares until the last such top tier prize is validated. Once the last such prize is validated, the Director will then end the game, end orders for that game, and end activations 30 days from that date of validation by following the announcement procedure in section (1) above. The Director will notify retailers as soon as reasonably possible after the last top tier prize is claimed so that the retailers may notify customers purchasing such tickets or shares that the top tier prizes have all been claimed and that the game is ending on the 30th day from the date of the last top tier prize validation. Customers may still purchase such tickets during that 30 day time period for the other prizes offered in the particular game.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0160

Discharge of Lottery from Liability

(1) **General:** The State of Oregon, its agents, officers, employees and representatives, the Lottery, its Director, agents, officers, employees, and representatives are discharged of all liability upon payment of a prize or any one installment thereof to the holder of any winning Lottery ticket or share or in accordance with the information set forth on any winning Lottery ticket or share, any claim form, including but not limited to a winner claim form, request to divide prize form, beneficiary designation form, and relinquishment of ownership interest form, supplied by the Lottery.

(2) **Finality of Decision:** The Director's decision regarding payment or awarding of a prize is final and binding. In the event a question arises relative to any winning Lottery ticket or share, any claim form, the payment, or the awarding of any prize, the Lottery may deposit the prize winnings into an interest bearing escrow fund until it resolves the controversy, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. All interest that may accrue while the prize winnings are on deposit in an interest bearing fund is and remains the property of the Lottery.

(3) **Sole Remedy:** In the event a dispute occurs between the Lottery and a player as to the amount of a prize, whether a Lottery ticket or share is a winner, whether it is valid, or whether it was purchased in error, the Director shall provide the player with one unplayed replacement Lottery ticket or share from any current Lottery game, and also in the Director's discretion, may provide up to one hundred new Lottery tickets or shares from any current game. This is the player's sole and exclusive remedy.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

177-046-0170

Governing Law

(1) **General:** All players or persons purchasing or possessing any Lottery ticket or share must comply with and are bound by all applicable laws, rules, and procedures and any additional terms and conditions found on the ticket or share itself. In the event of a conflict between the additional terms and conditions found on the back of a ticket or share with the Lottery's rules, the rules control.

(2) **Lottery Materials:** All materials distributed by the Lottery for playing Lottery games must be used solely for playing the game described by these rules. Any use or reproduction of the materials for purposes other than those permitted by these rules may constitute a violation of the gambling laws of the State of Oregon.

(3) **Director's Decisions:** All decisions of the Director regarding Lottery games are final.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08

Oregon State Marine Board Chapter 250

Rule Caption: Establish a 5-mph zone on the Willamette River in the I-5 Boones Bridge Area.

Adm. Order No.: OSMB 5-2008

Filed with Sec. of State: 7-11-2008

Certified to be Effective: 7-11-08

Notice Publication Date: 5-1-2008

Rules Amended: 250-020-0032

Subject: This rule will set a 5 mph slow-no-wake zone on the Willamette River in the Boones Bridge area near Wilsonville. House-

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

Rules Coordinator: June LeTarte—(503) 378-2617

250-020-0032

Boat Operations on the Willamette River in Clackamas County

(1) No person shall operate a motorboat in excess of 10 MPH in the following areas:

- (a) Between the southern shore of Hog Island and the mainland;
- (b) Within 100 feet of the west shore, between RM 30.0 and 30.5.

(2) No person shall operate a boat:

(a) Downstream from Oregon City Falls in an area from the base of the falls to a line across the river between the northeast corner of the Crown Zellerbach's Mill A Grinder Room on the west bank of the river to the southwest corner of Publisher's Paper Company Power Plant on the east bank of the river as marked;

(b) In the area commonly known as the "cul-de-sac" or the Simpson Paper Company tailrace; beginning at the mouth of the tailrace on the south bank then extending across the tailrace following the line established by the bridge across the tailrace to the north bank, then in a westerly, southerly, and easterly direction around the bank of the tailrace to the place of beginning.

(c) Exceptions:

(A) Boats of any federal, state, county, or local governmental agency and Portland General Electric Sullivan Plant and Crown Zellerbach Corporation Mill maintenance crews may operate in the closed area when on official business;

(B) Boats used in taking lamprey under a permit issued by the State Department of Fish and Wildlife may operate in the closed area subject to the conditions specified in the permit.

(3) No person shall operate a boat at a speed in excess of a "Slow — No Wake" maximum 5 MPH speed on the following waters:

(a) Cedar Island lagoon;

(b) From the north point of the eastern spit of Cedar Island 100 yards due north and thence due west to the shore line;

(c) Within 200 feet of a designated public launching ramp and/or marked swimming area;

(d) Within 200 feet of shore adjacent to George Rogers Park (Lake Oswego), from the southern bank of Sucker Creek north along the west bank of the Willamette, to a point 200 yards north of the boat ramp, as posted;

(e) From the I-5 Boones Bridge west approximately 1,700 feet to the Railroad Bridge.

(4) No person shall operate a personal watercraft in continuous operation on the Willamette River between Hog Island and the Union Pacific Railroad Bridge during the period from May 1 through September 30, except to transit through this zone.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 26, f. 7-20-64; MB 80, f. & ef. 4-19-77; MB 83, f. & ef. 4-22-77; Renumbered from 250-020-0142; MB 9-1982, f. 10-13-82, ef. 10-15-82; MB 6-1986, f. & ef. 5-23-86; MB 1-1987, f. & ef. 2-4-87; MB 13-1987, f. & ef. 6-15-87; MB 3-1996, f. & cert. ef. 2-22-96; OSMB 5-2000, f. & cert. ef. 10-30-00; OSMB 5-2007(Temp), f. & cert. ef. 6-18-07 thru 12-13-07; Administrative correction 12-20-07; OSMB 5-2008, f. & cert. ef. 7-11-08

Rule Caption: Establish slow no-wake zone on Prineville Reservoir adjacent to the resort marina.

Adm. Order No.: OSMB 6-2008

Filed with Sec. of State: 7-11-2008

Certified to be Effective: 7-11-08

Notice Publication Date: 5-1-2008

Rules Amended: 250-020-0073

Subject: This rule establishes a "Slow No Wake" zone on Prineville Reservoir adjacent to the Prineville Resort Marina.

Rules Coordinator: June LeTarte—(503) 378-2617

250-020-0073

Boat Operations on Ochoco and Prineville Reservoirs in Crook County

NOTE: "Towed equipment" applies to surfboarding and other types of towed equipment, as well as water skiing.

(1) Except on safe take-offs and landings, boats with skiers and other types of towed equipment must keep 200 feet or more from shore. If a safe landing as defined in these rules is not possible, skiers must be picked up by the boat before coming within the 200-foot-from-shore line and brought to shore under the established speed restrictions (5 MPH within 200 feet of shore). Boats towing skiers may exceed 5 MPH to the extent necessary to maintain the skiers in a skiing position within 200 feet from the shore line only when taking off or landing under safe conditions as outlined in this section. However, boats may not exceed the 5 MPH speed restriction,

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including the take-off and landing of skiers in tow, in the areas listed in section (2) of this rule:

(a) A "safe" take-off or landing with a skier in tow is accomplished by leaving or approaching the take-off or landing site within an arc which has its center at the take-off or landing site and which is not closer than 45 degrees out from the shore on either side. It is not a "safe" landing to approach a landing site parallel to the shore line. Take-offs and landings should be made in a counter-clockwise pattern. A take-off or landing will not be considered safe unless it can be accomplished without risk to the safety of any swimmers or other watercraft;

(b) No boat shall follow behind a skier closer than 300 feet, nor cross the towing boat less than 200 feet, nor alongside a skier closer than 100 feet.

(2) No person shall operate a motorboat at a speed in excess of 5 MPH in the following areas:

(a) Within 200 feet of the shore line (except under conditions authorized in section (1) of this rule);

(b) Within 200 feet of a marked swimming area;

(c) Within 200 feet of a launching ramp;

(d) Within the cove located to the west of Ochoco State Park on Ochoco Reservoir, where the State Park Boat Launching Ramp and county floats are located;

(e) East of a line from the point east of the Ochoco Boat Rentals across Ochoco Reservoir to a spot marked on the south side. Markers are identified as orange-colored and tripod shaped.

(f) Within the cove area where the Ochoco Boat Rentals moorage is located and designated by a buoy south of the moorage and an orange-colored tripod marker on the point of land east of the moorage;

(g) East of a line between two markers across the Prineville Reservoir at a point approximately 1/2 mile west of the entrance of Owl Hollow Creek. The shore markers are identified by their orange color and tripod shape.

(h) South and west of a line extending across the mouth of Roberts Bay on Prineville Reservoir, as marked.

(2) No person shall operate a motorboat at a speed in excess of slow-no-wake in Prineville Reservoir adjacent to the Prineville Reservoir Resort Marina as marked by buoys beginning approximately 500 feet north of the Prineville Resort Marina and continuing 500 feet beyond the perimeter of the marina to a point approximately 500 feet south of the resort boat ramp from May 15 through September 15.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 16, f. 8-20-62; Renumbered from 250-020-0100; OSMB 12-2001, f. & cert. ef. 10-29-01; OSMB 6-2008, f. & cert. ef. 7-11-08

Oregon State Treasury Chapter 170

Rule Caption: Public funds collateralization rules.

Adm. Order No.: OST 2-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 4-1-2008

Rules Adopted: 170-040-0020, 170-040-0030, 170-040-0040, 170-040-0050, 170-040-0060, 170-040-0070, 170-040-0080

Rules Repealed: 170-030-0005, 170-030-0010, 170-030-0015, 170-030-0020, 170-030-0025, 170-030-0030, 170-030-0045, 170-030-0050, 170-030-0055

Subject: Repealing Division 30, Collateral Pool and adopting Division 40, Public Funds Collateralization rules. Division 40 rules outline the new procedures for the State Treasurer, public funds bank depositories and public officials relative to carrying out the requirements set forth by the 2007 legislative changes to ORS 295.

Rules Coordinator: Sally Furze—(503) 378-4990

170-040-0020

Expenses of Administration Paid by Bank Depositories

For the services, duties and activities of the Office of the State Treasurer (OST) performed under ORS Chapter 295, the OST shall charge bank depositories for the costs incurred by the OST based on a fixed fee plus a pro rata share of the remaining costs according to the amount of public funds deposits held by a bank depository. Each depository shall pay any fee amounts owed to OST by the time and in accord with the terms set forth in an invoice received from OST. Payment shall be made by electronic funds transfer in the manner and to the account designated by OST in its invoice.

Stat. Auth.:

Stats. Implemented: ORS 295.106

Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08

170-040-0030

Approval of Loan Repayment Obligations Pledged by Bank Depositories

(1) Loan repayment obligations owed by a county, city, school district, port district or other public body in the State of Oregon may be pledged by a bank depository as collateral only after the bank depository has received written approval from the Office of the State Treasurer (OST). However, the OST will not accept requests for and approve such loans as collateral, unless and until written notice is provided to bank depositories that, from a date designated in the notice, OST will begin to accept such requests and evaluate the acceptability of such loans as collateral. In the event OST approves such loans as collateral, the loans will be valued at seventy-five percent of their outstanding principal amount for purposes of calculating whether adequate collateral has been pledged by a bank depository with its custodian, as required under ORS Chapter 295.

(2) After receipt of the notice described above, the bank depository shall submit a written request to the OST containing the following information:

(a) The name of the payment obligor under the loan;

(b) The original principal balance of the loan;

(c) The current unpaid principal balance of the loan;

(d) The maturity date for the loan;

(e) Whether the loan may be repaid prior to maturity;

(f) The credit rating (if applicable) of the general obligations of the obligor;

(g) The credit enhancement (such as insurance), if any, for the loan;

(h) Whether an event of default has ever occurred under the loan; and

(i) Whether the obligor has defaulted with respect to the payment of principal or interest on any of its loans or similar obligations within the preceding 10 years or during the period of its existence if that is less than 10 years.

(3) The OST will permit a loan to be pledged as security only if:

(a) The public body has not been in default with respect to the payment of principal or interest on any of its loans within the preceding 10 years or during the period of its existence if that is less than 10 years;

(b) If rated by a rating agency, the public body's general obligations have a credit rating of AA or Aa;

(c) If the loan is credit enhanced, the provider of the credit enhancement has a credit rating of AA or Aa;

(d) If the above referenced ratings are not available, OST determines, based on the information submitted to it, that the loan is of sufficiently high credit quality that it may be pledged as collateral; and

(e) The unpaid principal amount of the loans pledged does not exceed 30% of the bank depository's collateral.

Stat. Auth.:

Stats. Implemented: ORS 295.001(17)(f)

Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08

170-040-0040

Approval of Bond Anticipation Notes Pledged by Bank Depositories

(1) Bond anticipation notes issued, sold or assumed by an authority under ORS 441.560 may be pledged as collateral by a bank depository only after the bank depository has received written approval from the Office of the State Treasurer (OST). However, the OST will not accept requests for and approve such bond anticipation notes as collateral, unless and until written notice is provided to bank depositories that, from a date designated in the notice, OST will begin to accept such requests and evaluate the acceptability of such notes as collateral.

(2) After receipt of the notice described above, the bank depository shall submit a written request to the OST containing the following information:

(a) The name of the note issuer;

(b) The original principal balance of the note;

(c) The current unpaid principal balance of the note;

(d) The maturity date of the note;

(e) Whether the note may be repaid prior to maturity;

(f) The credit rating (if applicable) of the issuer;

(g) The credit enhancement (such as insurance), if any, of the note;

(h) Whether an event of default has ever occurred under the note; and

(i) Whether the issuer has defaulted with respect to the payment of principal or interest on any of its notes or similar obligations within the preceding 10 years or during the period of its existence if that is less than 10 years.

(3) The OST will permit a note to be pledged as security only if:

(a) The issuer has not been in default with respect to the payment of principal or interest on any of its obligations within the preceding 10 years or during the period of its existence if that is less than 10 years;

(b) If rated by a rating agency, the issuer's general obligations have a credit rating of AA or Aa;

(c) If the note is credit enhanced, the provider of the credit enhancement has a credit rating of AA or Aa; or

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(d) OST determines, based on the information submitted to it, that the note is of sufficiently high credit quality that it may be pledged as collateral.

(4) If the OST determines that there is an insufficient market in bond anticipation notes issued, sold or assumed by an authority under ORS 441.560 to provide for the efficient trading and liquidation of such bond anticipation notes, OST will value bond anticipation notes issued, sold or assumed by an authority under 441.560 at seventy-five percent of their outstanding principal amount for purposes of calculating whether adequate collateral has been pledged by a bank depository with its custodian, as required under ORS Chapter 295.

Stat. Auth.:
Stats. Implemented: ORS 295.001(17)(g)
Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08

170-040-0050

Public Officials' Notification of Bank Depositories

Each public official shall maintain on file with the Office of the State Treasurer the name and address of each bank depository in which the public official deposits public funds and shall update such information at least annually or within 10 days of a change in any depository.

Stat. Auth.:
Stats. Implemented: ORS 295.006(2)
Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08

170-040-0060

Accounts in Financial Institutions Outside Oregon

The Office of the State Treasurer may establish demand deposit accounts in financial institutions outside this state for the purpose of accepting deposits of funds related to the state investments in geographical areas respectively serviced by the institutions. Such accounts shall be deposited only in financial institutions that are well-capitalized according to the classifications of its primary federal regulatory authority.

Stat. Auth.:
Stats. Implemented: ORS 295.205(2)
Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08

170-040-0070

Approval for a Bank Depository to Hold Excess Public Funds

(1) The Office of the State Treasurer may approve the request of a bank depository to hold public funds in excess of the limits provided in ORS 295.048(1)(a) through (c), only if:

(a) The bank deposits collateral valued at 100% of the amount of such excess public funds deposits; and

(b) The bank demonstrates to the satisfaction of the State Treasurer that allowing such excess deposits provides benefits to one or more depositors, does not jeopardize public funds, and that the bank has a plan for the orderly elimination of such excess deposits within 90 days.

Stat. Auth.:
Stats. Implemented: ORS 295.048(4)
Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08

170-040-0080

Custodian Bank Must Meet Statutory Requirements

(1) A bank depository may designate the Federal Home Loan Bank ("FHLB") or any insured institution or trust company that has been approved by the State Treasurer and otherwise meets the criteria of ORS 295.001(5)(a) (an "approved bank") only if, and so long as, the FHLB or approved bank demonstrates to the satisfaction of the State Treasurer that it complies with the duties of a custodian bank required under 295.001 to 295.108 (the "statutory requirements").

(2) If the State Treasurer determines that an approved bank has failed to comply with the statutory requirements, the State Treasurer shall revoke the prior approval granted under ORS 295.001(5)(b)(C) and remove the bank from the banks that the State Treasurer has approved to serve as custodians.

(3) If the State Treasurer determines that the FHLB or an approved bank has failed to comply with the statutory requirements, it will issue a notice to all bank depositories informing the banks of the State Treasurer's determination. After the State Treasurer has issued such notice, a bank depository may not use the FHLB or approved bank subject to the notice as its custodian bank and, as soon as practicable, shall enter into an agreement with a successor custodian bank and transfer all securities held by the FHLB or formerly approved bank to the successor custodian bank.

(4) If the State Treasurer later determines that the FHLB or an insured institution or trust company is eligible to serve as a custodian bank because it has demonstrated to the satisfaction of the State Treasurer that it is capable of fulfilling the statutory requirements, the State Treasurer will issue a notice informing bank depositories of its determination and that the FHLB or insured institution or trust company subject to the notice is eligible to serve as a custodian bank, provided the insured institution or trust company has also been approved by the State Treasurer under ORS 295.001(5)(b)(C).

(5) The State Treasurer will not designate an insured institution or trust company to serve as a custodian bank under ORS 295.001(5)(b)(C) unless it demonstrates to the satisfaction of the State Treasurer that it is capable of fulfilling the statutory requirements of a custodian bank.

Stat. Auth.:
Stats. Implemented: ORS 295.001(5)
Hist.: OST 2-2008, f. 6-27-08, cert. ef. 7-1-08

Rule Caption: Allocation of Private Activity Bond Limit.

Adm. Order No.: OST 3-2008(Temp)

Filed with Sec. of State: 7-9-2008

Certified to be Effective: 7-9-08 thru 1-4-09

Notice Publication Date:

Rules Amended: 170-071-0005

Subject: The rule changes (1) clarify the Private Activity Bond Committee's policy of allowing carry forward allocations for specific projects/purposes or for a qualifying class of projects to be further allocated by the requestor, (2) revise the time period for acceptance of cap allocation requests to allow for more efficient timing of meetings of the Committee, and (3) bring the administrative rules for PAB allocations into compliance with HB 3265 which became effective on January 1, 2008.

Rules Coordinator: Sally Furze — (503) 378-4990

170-071-0005

Allocation of Private Activity Bond Limit

(1) Definitions:

(a) "Committee" means the Private Activity Bond Committee established pursuant to ORS 286.615.

(b) "Issuer" has that meaning given to it by ORS 286.605.

(c) "Private Activity Bonds" has the meaning given in Section 141 of the Internal Revenue Code of 1986.

(2) Meetings of the Committee. Committee meetings will be held as necessary, and on dates determined by the Committee to be consistent with the efficient allocation of the state's private activity bond volume limit (CAP), with public notice given as required by law. Committee meetings are open to the general public and may be held in any location permitted under the public meetings law, ORS 192.610 to 192.690, where the Committee deems appropriate. The Committee reserves the right to change its meeting schedule as allowed by the Oregon Public Meetings Law.

(3) Allocation Requests. Applications for current year CAP must be submitted no earlier than 30 days prior to the year for which the allocation is requested. Requests must be received no later than 10 business days before the scheduled meeting of the Committee at which the request is to be considered. Private activity bond issuers not specifically granted CAP by the legislature must submit requests for CAP to the Committee. Issuer's who have been granted a CAP allocation by the legislature may also apply to the Committee for additional CAP. CAP requests may be made for a specific project or for an amount to be further allocated by the requestor among a class of projects or activities that meet the allocation criteria. CAP requests and all communications must be sent to the Committee's address (Office of the State Treasurer, Debt Management Division, 350 Winter Street NE, Suite 100, Salem, Oregon 97301-3896; email "DMD@ost.state.or.us") and include:

(a) Name of the governmental bond issuer,

(b) Title of the obligation to be issued,

(c) Principal amount of the obligation,

(d) Amount of the allocation request,

(e) Date of any purchase commitment if such commitment has been made,

(f) Name and address of the original purchaser(s) of the obligation if such purchase has been made,

(g) Name, address and phone number of the principal user(s) of the proceeds from the issue,

(h) Anticipated sale date of the issue,

(i) Anticipated closing date of the issue,

(j) Name, address and phone number of bond counsel,

(k) Section and paragraph of the Internal Revenue Code, as identified by bond counsel, under which the bonds are deemed private activity bonds,

(l) How the project or activity for which an allocation is requested meets statutory standards,

(m) Expected number of family wage jobs created or saved as a result of the allocation,

(n) Expected number of housing units to be constructed or renovated as a result of the allocation, (describe how the affordability requirements of the Internal Revenue Code and your local requirements, if applicable, are to be met) and

(o) Any additional material, as required by the Committee, in support of the requested allocation.

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(4) Allocation Standards. The purpose of private activity bonding in this state is to maximize the economic benefits of such bonding to the citizens of this state. To this end, the Committee shall make allocations that are expected to further economic development, housing, education, redevelopment, public works, energy, waste management, transportation and other activities that the Committee determines will benefit the citizens of the state. The Committee, in determining whether an allocation is made to a project or class of projects or activities, will consider criteria including but not limited to the following:

(a) Support projects that increase the number of family wage jobs in Oregon,

(b) Promote economic recovery in small cities heavily dependent on a single industry,

(c) Emphasize development in underdeveloped rural areas of this state,

(d) Utilize educational resources available at institutions of higher education,

(e) Support development of the state's small businesses, especially businesses owned by women and members of minority groups,

(f) Encourage use of Oregon's human and natural resources in endeavors, which harness Oregon's economic comparative advantages.

(5) Decision Factors. The Committee shall consider the following factors in reaching its allocation decision:

(a) Amount of CAP remaining within the Committee's allocation discretion and the total amount of unused CAP remaining at the time the request is received,

(b) Amount of allocation requested,

(c) Whether the project(s) or activities promote one of the standards listed in section (4) of this rule, and

(d) Type of bond issuer making the request.

(6) Allocation Methods.

(a) The Committee may grant more or less than the originally requested amount of CAP. Issuers must submit requests in the form and manner described in section (3) of this rule.

(b) At the Committee's discretion, a portion of their CAP may be reserved for the last six months of the calendar year.

(7) Committee Decision Final. Issuers have the right to submit additional information, germane to their request, to the Committee at its meeting described in section (6) of this rule. Action of the Committee is final, however, if a CAP request is denied, a new application may be re-submitted through the procedures outlined in this rule.

(8) Post-Allocation Report. Issuers to whom CAP allocations have been made under this rule must submit to the Committee, within 150 days after receiving such allocation or by December 15 of the current calendar year, whichever is earliest, a confirmation of bond closing. In the event an issuer fails to file written confirmation of bond closing as required by this section, the CAP allocation shall automatically lapse. Bond closing confirmations must be delivered to the Committee address and includes:

(a) Name of the governmental bond issuer,

(b) Title of the obligation issued,

(c) Principal amount of the obligation issued and allocation used,

(d) Date of closing,

(e) Date of the bond allocation,

(f) Name and address of the individual submitting the bond closing confirmation, and

(g) Any additional material, which may be required by the Committee in support of the closing confirmation.

(9) Lapse or Extension of Allocation. Lapse of an allocation does not preclude the issuer from applying for a subsequent allocation for the same project. Issuers may, under compelling circumstances, request an extension of time to their initial 150-day period. Such requests must be filed with the Committee for approval or denial of the extension. All CAP allocations automatically lapse on December 15 of the calendar year for which the allocation is made, unless the issuer who has received the allocation files with the Committee a binding commitment to purchase and close the bond issue on or before December 31.

(10) Carry Forward Allocations.

(a) The Committee, on behalf of the state's agencies, commissions, and governmental units, may elect to carry forward all unused CAP. To receive a carry forward CAP allocation, an issuer must file a carry forward request with the Committee before December 15 and after September 30 of the current calendar year. The Committee will require information necessary for it to determine whether such carry forward request qualifies under the Internal Revenue Code and associated regulations. The Committee, not later than January 31 of the following year, shall make carry forward allocations to eligible issuers for specified purposes or for an amount to be further allocated by the requestor among a class of projects or activities that meet the allocation criteria. Carry forward requests must include the information required in section (3) of this rule.

(b) An issuer receiving a carry forward allocation must forward to the Internal Revenue Service a document indicating the carry forward election

made to that issuer by the Committee, in such manner and format prescribed by the Internal Revenue Service and any relevant state or federal regulations.

(c) It is the responsibility of the issuers to whom carry forward CAP is granted to file Form 8328 "Carry Forward Election of Unused Private Activity Bond Volume Cap" with the Internal Revenue Service Center, Ogden, UT 84201 on or before February 15 of the year in which the carry forward is granted, in order to validate the carry forward with the federal government. A signed copy of the issuer's filing with the Internal Revenue Service must also be sent to the Committee on or before February 15 of the year in which the carry forward CAP is granted.

(d) Use Report. Issuers to whom carry forward CAP is granted must submit to the Committee, within 30 days of closing, a confirmation of CAP use and bond closing information including:

(A) Name of the governmental bond issuer,

(B) Title of the obligation issued,

(C) Principal amount of the obligation issued and allocation used,

(D) Date of closing,

(F) Date of the bond allocation,

(G) Name and address of the individual submitting the bond closing confirmation, and

(H) Any additional material, which may be required by the Committee in support of the closing confirmation.

(11) Annual Needs Survey. The Committee during the final quarter of each calendar year will inquire of the private activity bond issuers of the state as to their anticipated private activity bond issuance and the need for private activity bond allocation in the ensuing year. To be taken into consideration by the Committee for future allocation issuers should provide their information to the Committee's address on or before December 15 of the calendar year prior to the year for which private activity bond projections are made.

(12) The Committee may allocate amounts, subject to the standards set forth in subsection (4) of this rule, among issuers without a request for allocation from the issuer in the event additional bond limit becomes available, because of changes in federal law or otherwise, that has not been specifically allocated to an issuer by the Legislative Assembly.

(13) Exceptions. The Committee, at its discretion, may waive any or all provisions of this rule.

Stat. Auth.: ORS 286.615

Stats. Implemented: ORS 286.615

Hist.: TD 3-1986, f. & ef. 9-18-86; TD 3-1988(Temp), f. & cert. ef. 6-14-88; TD 4-1988, f. & cert. ef. 12-30-88; TD 2-1994, f. & cert. ef. 9-9-94; TD 2-1995, f. & cert. ef. 12-26-95; TD 1-1997, f. & cert. ef. 7-23-97; OST 1-2001, f. 7-23-01, cert. ef. 8-1-01; OST 4-2006, f. & cert. ef. 10-25-06; OST 2-2007(Temp), f. & cert. ef. 11-20-07 thru 4-15-08; Administrative correction 4-22-08; OST 3-2008(Temp), f. & cert. ef. 7-9-08 thru 1-4-09

Oregon University System Chapter 580

Rule Caption: To establish Tuition and Fees for the 2008–09 Academic year, including Room and Board rates.

Adm. Order No.: OSSHE 8-2008

Filed with Sec. of State: 6-17-2008

Certified to be Effective: 6-17-08

Notice Publication Date: 4-1-2008

Rules Amended: 580-040-0040

Subject: To establish Tuition and Fees for the 2008–09 Academic Year, including Room and Board rates.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-040-0040

Academic Year Fee Book

The document entitled "Academic Year Fee Book" dated June 6, 2008, is hereby amended by reference as a permanent rule. All prior adoptions of academic year fee documents are hereby repealed except as to rights and obligations previously acquired or incurred there under.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1978, f. & ef. 6-15-78; HEB 5-1979, f. & ef. 7-20-79; HEB 11-1979, f. & ef. 8-22-79; HEB 1-1980, f. & ef. 4-18-80; HEB 7-1980, f. & ef. 6-18-80; HEB 11-1980, f. & ef. 8-20-80; HEB 4-1981(Temp), f. 6-30-81, ef. 7-1-81; HEB 5-1981, f. & ef. 8-18-81; HEB 15-1981(Temp), f. & ef. 12-18-81; HEB 5-1982, f. & ef. 7-14-82; HEB 4-1983, f. & ef. 7-29-83; HEB 4-1984, f. & ef. 6-20-84; HEB 5-1985, f. & ef. 8-12-85; HEB 12-1986, f. & ef. 7-30-86; HEB 6-1987, f. & ef. 8-4-87; HEB 8-1988, f. & cert. ef. 8-5-88; HEB 10-1988, f. & cert. ef. 11-16-88; HEB 3-1989, f. & cert. ef. 11-27-89; HEB 6-1989, f. & cert. ef. 7-28-89; HEB 7-1990, f. & cert. ef. 6-4-90; HEB 8-1990(Temp), f. & cert. ef. 7-26-90; HEB 12-1990, f. & cert. ef. 10-3-90; HEB 5-1991, f. & cert. ef. 8-15-91; HEB 8-1992, f. & cert. ef. 7-31-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 5-1993, f. & cert. ef. 8-11-93; HEB 7-1994, f. & cert. ef. 8-4-94; HEB 3-1995, f. & cert. ef. 8-1-95; HEB 3-1996, f. & cert. ef. 8-8-96; HEB 5-1996, f. & cert. ef. 12-18-96; HEB 3-1997, f. & cert. ef. 7-24-97; OSSHE 4-1998, f. & cert. ef. 7-22-98; OSSHE 5-1998(Temp), f. & cert. ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cert. ef. 12-23-98; OSSHE 3-1999(Temp), f. & cert. ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cert. ef. 9-16-99; OSSHE 3-2000, f. & cert. ef. 7-26-00; OSSHE 4-2001, f. & cert. ef. 7-27-01; OSSHE 8-2002, f. & cert. ef. 8-14-02; OSSHE 2-2003, f. & cert. ef. 8-4-03; OSSHE 6-

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2004, f. & cert. ef. 6-15-04; OSSHE 2-2006, f. & cert. ef. 6-8-06; OSSHE 3-2007, f. & cert. ef. 6-21-07; OSSHE 6-2008(Temp), f. & cert. ef. 3-20-08 thru 9-1-08; OSSHE 8-2008, f. & cert. ef. 6-17-08

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

Rule Caption: Access to Public Records.

Adm. Order No.: OSU 2-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Amended: 576-004-0000, 576-004-0005, 576-004-0015, 576-004-0020

Subject: Division 4 of OAR 576, entitled "Access to Public Records," provides guidelines for the University and the public regarding how properly to make public records requests and how the University responds to public records requests. The University is amending Division 4 in response to the Oregon State legislature's adoption of changes to the Oregon Public Records Law, at ORS 192.440. Consistent with those changes, the proposed amendments clarify where persons may obtain the University's written procedures for making public records requests, where persons may obtain information regarding the fees the University charges to respond to public records requests, how persons may obtain a waiver of fees, and how the University may respond to public records requests.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-004-0000

Policy

(1) Any person may obtain public records, not otherwise exempt from disclosure from the University, consistent with this rule and the University's written procedure.

(2) Written procedures describing how to make public records requests are available at the University website, the University's Office of the General Counsel, and the University's Valley Library.

(3) Each request made under this rule must describe the public records requested with such reasonable and sufficient specificity as to allow the requested public records to be identified and located.

(4) If a request does not comply with the requirement of reasonable and sufficient specificity as to allow the identification and location of the requested public records, such a request will be denied until this requirement is satisfied.

Stat. Auth.: ORS 192.440 & 351.070

Stats. Implemented: ORS 192.440 & 351.070

Hist.: OSU 5-1980, f. & ef. 12-3-80; OSU 3-1996, f. & cert. ef. 6-21-96; OSU 2-2008, f. 6-27-08, cert. ef. 7-1-08

576-004-0005

Authority to Deny

(1) The University may deny a request for public records if the records are exempt from disclosure or if the conditions for requests are not met.

(2) A written denial must be sent to the person making the public records request.

Stat. Auth.: ORS 192.430 & 351.070

Stats. Implemented: ORS 192.430 & 351.070 & 351

Hist.: OSU 5-1980, f. & ef. 12-3-80; OSU 3-1996, f. & cert. ef. 6-21-96; OSU 2-2008, f. 6-27-08, cert. ef. 7-1-08

576-004-0015

Response

The University shall respond to written requests for public records as soon as practicable and without unreasonable delay. The University's response will acknowledge receipt of the public records request and include at least one of the following: A statement that the University does not possess, or is not the custodian of, the public record. Copies of all requested public records for which the University does not claim an exemption from disclosure, or a statement that all requested records are exempt from disclosure. A statement that the University is the custodian of at least some of the requested public records, an estimate of the time the public body requires before the public records may be inspected or copies of the records will be provided and an estimate of the fees that the requester must pay under section 576-004-0020. A statement that the University is the custodian of at least some of the requested public records and that an estimate of the time and fees for disclosure of the public records will be provided by the University within a reasonable time. A statement that the University is uncertain whether it possesses the public record and that the public body will search for the record and make an appropriate response as soon as prac-

ticable. A statement that state or federal law prohibits the University from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanctions, with a citation to the applicable state or federal law.

Stat. Auth.: ORS 192.430 & 351.070

Stats. Implemented: ORS 192.430 & 351.070

Hist.: OSU 5-1980, f. & ef. 12-3-80; OSU 3-1996, f. & cert. ef. 6-21-96; OSU 2-2008, f. 6-27-08, cert. ef. 7-1-08

576-004-0020

Fees

(1) The University and its departments may charge fees to reimburse its costs for the duplication, copies, and preparation of public records requested by a person under OAR 576-004-0000 et. seq. The fees are set forth in the University list of fees and charges adopted by 576-010-0000.

(2) The University will not produce public records requested until fees associated with their production are paid.

(3) The University may produce public records without charge or at a substantially reduced fee if the University determines that the waiver or reduction of fees is in the public interest because making the information, materials, and documents available primarily benefits the general public. The person requesting the public records must request a waiver or reduction of fees and must explain why allowing the waiver or reduction is in the public interest.

Stat. Auth.: ORS 192.440 & 351.070

Stats. Implemented: ORS 192.440 & 351.070

Hist.: OSU 5-1980, f. & ef. 12-3-80; OSU 3-1996, f. & cert. ef. 6-21-96; OSU 2-2008, f. 6-27-08, cert. ef. 7-1-08

Rule Caption: Setting fees and charges at Oregon State University for fiscal year 2008–2009.

Adm. Order No.: OSU 3-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Amended: 576-010-0000

Subject: The amendment will set fees and charges for designated services at Oregon State University for fiscal year 2008–2009. The rule state "The University hereby adopts by reference a list of fees and charges for fiscal year 2008–2009. The list of Fees and Charges is available at the Oregon State University Office of Budgets and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference into this rule."

Rules Coordinator: Barbara Melton—(541) 737-6262

576-010-0000

Fees and Charges

The University hereby adopts by reference a list of fees and charges for fiscal year 2008–2009. This List of Fees and Charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

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

Stat. Auth.: ORS 351.070, 352.360 & 580-040-0010

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05; OSU 1-2006, f. 6-23-06, cert. ef. 7-1-06; OSU 1-2007, f. 6-18-07, cert. ef. 7-1-07; OSU 3-2008, f. 6-27-08, cert. ef. 7-1-08

Rule Caption: Collecting Accounts and Notes Receivable.

Adm. Order No.: OSU 4-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Adopted: 576-010-0011

Subject: The Collecting Accounts and Notes Receivable rule identifies the remedies the University may pursue to collect delinquent accounts and notes receivable that are due the University. The remedies identified include, but are not limited to, withholding University services from delinquent debtors, denying or canceling delin-

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quent debtor's registration, and contracting with collection agencies to pursue the amounts owed the University.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-010-0011

Collecting Accounts and Notes Receivable

(1) As directed by Oregon State Board of Higher Education Administrative Rule, OAR 580-041-0010(1), the Office of Business Affairs at Oregon State University exercises diligence in collecting delinquent accounts and notes receivable due it by pursuing, as appropriate, the following remedies:

(a) Withholding transcripts, certificates and/or diplomas, and other applicable campus services;

(b) Denying or canceling registration;

(c) Withholding further account receivable privileges;

(d) Applying any non-exempt credits in favor of debtor to debt;

(e) With employee's approval, withholding wages;

(f) Adding collection costs as permitted by statutes and regulations, including, but not limited to: collection agency charges, reasonable attorney's fees including attorney fees on appeal, and court costs;

(g) Charging fees for sending a delinquent account or note receivable into collection;

(h) Sending regular billings and past due notices;

(i) Utilizing telephone inquiries;

(j) Sending letters of demand;

(k) Using "skip trace" information, to identify a debtor's location to direct communications regarding debt owed, as permitted by statutes and regulations;

(l) Utilizing offset procedures with other state agencies;

(m) Utilizing Department of Revenue as a collection agent, including utilization of the Department of Revenue Set Off Individual Liability program, which may result in a reduction of a debtor's tax refund by the amount owed the University;

(n) Utilizing various commercial collection agencies, by contract, as permitted by law;

(o) Instituting legal action as permitted by statutes and regulations;

(p) Using commercial credit reporting agencies by contract and as permitted (or required by law);

(q) Seeking collection on judgments as permitted by statutes and regulations;

(r) Requiring exit interview for borrowers under federal loan programs;

(s) Evicting debtors from residence halls or student family housing for nonpayment of room and/or board fees;

(t) Reducing debtor's financial aid proceeds by the amount of the debtor's accounts receivable debts in accordance with Federal Title IV regulations, before releasing any remaining financial aid to the debtor.

(2) The amounts charged by University pursuant to the above remedies, including but not limited to the fees charged for sending a delinquent account or note receivable into collection, are set forth in the University list of fees and charges adopted by OAR 576-010-0000.

(3) The Oregon State University Director of Business Affairs, or his/her designee, may identify unique circumstances for which the full application of the above remedies is not prudent, in the best interest of the University, or lawful. In most circumstances, the University will continue to pursue collection of delinquent accounts and notes receivable through the Department of Revenue Set Off Individual Liability program.

(4) A debtor may challenge a charge within 60 days after the first bill on which the suspected error or problem appeared. Challenges should be directed to the office initiating the charge and should include a copy of the bill challenged and documentation evidencing the suspected error or problem. The Oregon State University Office of Business Affairs will assist debtors who have difficulty identifying the office initiating the charge. If an error is found, affected charges will be adjusted.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist: OSU 4-2008, f. 6-27-08, cert. ef. 7-1-08

Rule Caption: Revolving Charge Account Program.

Adm. Order No.: OSU 5-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Adopted: 576-010-0021

Subject: The Revolving Charge Account Program Rule creates a Revolving Charge Account Program that would allow the University to offer extended payment terms to parties that incur debts, including charges, fines or penalties, at the University. The Revolving Charge Account Program rule describes the terms and conditions of

the program and provides information regarding the interest to be charged for unpaid balances on University revolving charge accounts.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-010-0021

Revolving Charge Account Program

(1) Oregon State University offers extended payment terms utilizing a revolving charge account program as authorized by the Oregon State Board of Higher Education (OAR 580-040-0041).

(2) Any person, organization, or agency that incurs charges, fines, or penalties at Oregon State University is automatically enrolled in the revolving charge account program, provided that Oregon State University may deny use of the revolving charge account program privilege to persons, organizations, or agencies that do not have a good credit history with Oregon State University and to anyone who has been in default status on student loans.

(3) Participants in the revolving charge account program shall sign a revolving charge account agreement in a form provided by OSU and shall abide by the terms and conditions of the program as set forth in that agreement.

(4) Debt amounts resulting from fines, penalties, and similar types of amounts owed may be added to a revolving charge account enforceable against the responsible debtor, even though the debtor has not signed a revolving charge account agreement.

(5) Revolving charge account debtors have the right to pay the outstanding debt in full at any time without penalty.

(6) Interest will be charged each month on any unpaid balance at the rate of one percent per month, or fraction thereof (12% APR).

(7) Oregon State University reserves the right to amend the terms and conditions applicable to revolving charge accounts without securing a new agreement. Debtors shall be notified, in writing, of any changes in applicable interest rates, before the changes go into effect.

(8) A debtor may challenge a charge within 60 days after the first bill on which the suspected error or problem appeared. Challenges should be directed to the office initiating the charge and include a copy of the bill challenged and documentation evidencing the suspected error or problem. The Oregon State University Office of Business Affairs will assist debtors who have difficulty identifying the office initiating the charge. If an error is found, affected charges will be adjusted.

(9) The debtor is responsible for informing the Oregon State University Office of Business Affairs of any name and address change occurring during the term of the revolving charge account agreement.

(10) Delinquent accounts will be processed under the procedures described in OAR 576-010-0011 (OSU Collecting Accounts and Notes Receivable).

Stat. Auth: ORS 351.070

Stats. Implemented: ORS 351.070

Hist: OSU 5-2008, f. 6-27-08, cert. ef. 7-1-08

Rule Caption: Articles Prohibited in Certain Athletic Facilities.

Adm. Order No.: OSU 6-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Amended: 576-024-0000

Subject: This rule allows individuals attending events open to the public to carry backpacks and other small bags used for carrying personal possessions into Reser Stadium, the area within the defining fence around Reser Stadium, and Gill Coliseum. The rule requires such individuals to submit their backpacks and other small bags used for carrying personal possessions for bag inspections before entering the designated areas. Bag inspections made pursuant to this rule do not include pat-down inspection of the individuals carrying backpacks or small bags used for personal possessions into the designated areas. Finally, this rule restricts those who may carry weapons into these designated areas during events open to the public to on-duty law enforcement officials assigned to the events.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-024-0000

Prohibited Articles

(1) The following items are not allowed anywhere within Reser Stadium or within the defining fence around it, or anywhere within Gill Coliseum during periods when it is being used for an event open and advertised to the public:

(a) Glass containers of any kind;

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- (b) Metal cans;
- (c) Weapons, firearms, destructive devices and ammunition, as provided in OAR 576-065-0000 to 576-065-0020;
- (d) Fireworks, explosives or explosive devices, inflammables, and artificial noisemakers as provided in the rules of the Pacific 10 Conference, available in the OSU Department of Intercollegiate Athletics;
- (e) Alcohol or alcoholic beverages, except as provided in OAR 576-060-0010 to 576-060-0039;
- (f) Briefcases, athletic bags, packages, duffel bags, coolers, ice chests, picnic baskets, and other similar containers capable of concealing prohibited articles, except that backpacks and other small bags may be used for carrying personal possessions;
- (g) Signs on sticks or poles;
- (h) Umbrellas.
- (2) Exceptions to the above prohibitions are limited to:
 - (a) Alcoholic beverages and alcoholic beverage containers belonging to Oregon State University concessionaire or catering services contracting with the University for its officially sponsored social functions, e.g. receptions, meetings, promotional activities, etc.;
 - (b) Weapons of law enforcement officials while on duty for the scheduled event;
 - (c) Megaphones used by cheerleaders;
 - (d) Functions held within the Valley Football Center or elsewhere in Reser Stadium, including the press box structure, which have been approved by the Department of Intercollegiate Athletics.
- (3) University employees or agents shall request, as a condition of the license to enter the facility, that persons about to enter allow them to look inside all backpacks and other bags for carrying personal possessions, purses and diaper bags.
 - (a) The person(s) entering the facility will be asked by University staff or agents to reveal the items in the backpack, purse or bag. Staff or agents shall inform person(s) in possession of the backpack, purse or bag of the reason for the inspection. Staff or agents shall further inform the persons entering the facility that they may decline the inspection and shall inform them of the following options available if they decline inspection:
 - (A) The person(s) will be denied admission to the facility, and will then be entitled to receive an immediate refund of the price of the ticket at the "Will Call" booth; or
 - (B) The person(s) may return the backpack, purse or bag to a vehicle and then enter the facility without such item.
 - (b) If the container is opened for inspection, and prohibited items are found by staff or agents, the possessor of such items shall be offered a choice of discarding the item(s), or returning them to a vehicle as provided in (3)(a)(B) of this rule;
 - (c) Personnel making the inspection requests are not obliged to cause persons to wait in line unduly while other inspections are proceeding. They must, however, request the inspection of the next person who appears carrying inspectable containers as soon as they have completed any given inspection;
 - (d) Inspections made under this rule do not include pat-down inspection of clothing being worn but do extend to carried items. Entering persons will be encouraged to keep moving through gates and doorways.
 - (4) If prohibited articles are openly possessed by a person inside the facility, that person shall be considered to have violated the license to enter and view the event. The license is then revoked and the person(s) shall be requested to leave immediately. A refusal or failure to leave following such a request can cause the person to be treated as a trespasser.
 - (5) If a refund is requested under the provisions of subsection (3)(a)(A) of this rule, a bearer coupon shall be delivered promptly by University officials. This bearer coupon may be exchanged for a full refund immediately at the "Will Call" or other appropriate ticket booth.
 - (6) Prohibited items which may be seen without inspection are subject to the same consequences as specified in section (3) of this rule.
 - (7) Signs shall be prominently displayed at entrances to the facilities listing prohibited articles, and providing notification of the request for inspection and the right to decline options.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1993, f. & cert. ef. 6-4-93; OSU 7-2001(Temp), f. & cert. ef. 9-28-01 thru 3-26-02; OSU 3-2002, f. & cert. ef. 2-25-02; OSU 6-2008, f. 6-27-08, cert. ef. 7-1-08

Rule Caption: Alcoholic Beverage Policy.

Adm. Order No.: OSU 7-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 5-1-2008

Rules Adopted: 576-060-0031

Rules Amended: 576-060-0010, 576-060-0015, 576-060-0020, 576-060-0025, 576-060-0035, 576-060-0037, 576-060-0038, 576-060-0039, 576-060-0040

Subject: The Alcoholic Beverage Policy rules provide a more comprehensive alcoholic beverage policy for the University by addressing service and consumption of alcoholic beverages in and around the University football stadium, by clarifying the procedures and requirements for approval to serve alcoholic beverages consistent with the University policies, and by adding an additional enforcement mechanism to the rules.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-060-0010

Purpose

These rules govern the conditions under which alcoholic beverages may be consumed in areas other than housing units on the University campus. Rules concerning use of alcoholic beverages by students in University housing units and by recognized student organizations are in OAR 576-018-0230 to 0260, and 576-015-0015. Copies are available through the Office of Student Conduct or at the Oregon Administrative Rules website. The University cautions against the excessive use of alcoholic beverages, and in the matters referred to in these rules, expects all persons serving or consuming alcoholic beverages to adhere to all applicable laws and regulations, including the regulations of the Oregon Liquor Control Commission ("OLCC").

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1988, f. 8-19-88, cert. ef. 9-1-88; OSU 4-1990, f. & cert. ef. 8-22-90; OSU 12-1996, f. & cert. ef. 8-23-96; OSU 4-1997, f. & cert. ef. 4-21-97; OSU 2-1998, f. & cert. ef. 6-12-98; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0015

Definitions

(1) "Insured Licensed Vendor" means a business entity that holds an annual liquor license issued by the OLCC and that carries public liability and liquor liability insurance at limits satisfactory to the University Director of Business Services.

(2) "Corvallis campus" means property owned or controlled by the University within the city limits of Corvallis, Oregon, except for those properties in use as single family dwellings.

(3) "Stadium" means the University football stadium complex including the football center and the indoor practice center.

(4) "University campus" means property owned or controlled by the University, including but not limited to the Corvallis campus, agricultural experiment stations, research forests, the Cascades campus at Central Oregon Community College, and Extension offices, except for those properties in use as single family dwellings.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1988, f. 8-19-88, cert. ef. 9-1-88; OSU 6-1992, f. & cert. ef. 7-24-92; OSU 2-1998, f. & cert. ef. 6-12-98; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0020

Use of Alcoholic Beverages on the Corvallis campus in connection with Oregon State University varsity football games

Alcoholic beverages may be served and consumed as provided in this rule in parking areas on the Corvallis campus in conjunction with scheduled Oregon State University varsity football games.

(1) Individuals wishing to picnic ("tailgate") prior to a varsity football game and serve non-bulk alcoholic beverages may do so only in parking areas other than those designated by signage as closed to tailgating. Food and non-alcoholic beverages must be available.

(2) No kegs or other bulk dispensing of alcoholic beverages are permitted in the parking areas without prior approval and registration in accordance with the process and requirements described in OAR 576-060-0035. The Vice President for Finance and Administration may designate specific areas in the parking lots in which any approved kegs and bulk dispensing must be located.

(3) Alcoholic beverages provided from kegs or bulk dispensing at group or individually sponsored events may not be served after the close of half-time of the football games.

(4) Any person violating this policy may be subject to disciplinary action and to removal from the premises as provided in OAR 576-060-0039.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1988, f. 8-19-88, cert. ef. 9-1-88; OSU 4-1990, f. & cert. ef. 8-22-90; OSU 6-1992, f. & cert. ef. 7-24-92; OSU 12-1996, f. & cert. ef. 8-23-96; OSU 4-1997, f. & cert. ef. 4-21-97; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

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576-060-0025

Use of Alcoholic Beverages at LaSells Stewart Center, CH2M Hill Alumni Center, the Memorial Union, Peavy Lodge, Agricultural Experiment Stations, and Memorial Union East

Alcoholic beverages, limited to beer and wine, may be served at events at LaSells Stewart Center, CH2M Hill Alumni Center, e Memorial Union, Peavy Lodge, the Agricultural Experiment Stations, and the Gallery and Forum in Memorial Union East when prior approval is secured following the process and requirements described in OAR 576-060-0035.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1988, f. 8-19-88, cert. ef. 9-1-88; OSU 3-1989, f. & cert. ef. 5-30-89; OSU 4-1990, f. & cert. ef. 8-22-90; OSU 9-1991, f. & cert. ef. 7-25-91; OSU 6-1992, f. & cert. ef. 7-24-92; OSU 4-1997, f. & cert. ef. 4-21-97; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0031

Use of Alcoholic Beverages in the Stadium Complex

(1) Alcoholic beverages, limited to beer and wine, may be served and consumed at the Stadium if served with food and non-alcoholic beverages by the Insured Licensed Vendor that has an exclusive catering contract with the University for catering at the Stadium. The vendor shall provide, on a monthly basis, prior notice of events at which it will be serving alcoholic beverages to Business Services through the Office of Risk Management. Service by any provider other than the exclusive caterer under contract to the University requires prior approval following the process and requirements described in OAR 576-060-0035

(2) Alcoholic beverages may be served in the Stadium skyboxes and suites only in connection with varsity football games. Food and non-alcoholic beverages must be provided. The individual skybox lessee serving the alcoholic beverages must carry host liquor liability insurance coverage, or equivalent insurance coverage, with limits satisfactory to Business Services. The skybox lessee must provide evidence for insurance meeting the minimum standards and guidelines of Business Services prior to the beginning of the football season.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0035

Procedures and Requirements for Approval

A request for approval to serve alcoholic beverages as required by these rules must be submitted to Business Services through the Office of Risk Management. A Licensed, Insured Vendor, approved by the University, must be named as the server. Food and non-alcoholic beverages must be provided in addition to the alcoholic beverages, which must be limited to beer and wine. Approval request forms are available through Business Services via the Office of Risk Management website. Approval request forms must be submitted at least three weeks prior to the event in order to assure adequate time for review by the designated date. The server or event co-sponsor must provide evidence of insurance meeting the minimum standards and guidelines of Business Services before the event will be approved. There must be an OLCC license for the event, if one is required under applicable law.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1988, f. 8-19-88, cert. ef. 9-1-88; OSU 3-1989, f. & cert. ef. 5-30-89; OSU 4-1990, f. & cert. ef. 8-22-90; OSU 9-1991, f. & cert. ef. 7-25-91; OSU 6-1992, f. & cert. ef. 7-24-92; OSU 12-1996, f. & cert. ef. 8-23-96; OSU 4-1997, f. & cert. ef. 4-21-97; OSU 2-1998, f. & cert. ef. 6-12-98; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0037

Use at Additional Locations

The Vice President for Finance and Administration, or designee, may authorize service of alcoholic beverages, limited to beer and wine, at specific events at additional locations not otherwise authorized under these rules upon a determination that to do so would be consistent with the intent of these rules. A request for authorization to serve at another location must be submitted to the Vice President for Finance and Administration no later than three weeks prior to the date of the event.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 3-1989, f. & cert. ef. 5-30-89; OSU 4-1990, f. & cert. ef. 8-22-90; OSU 12-1996, f. & cert. ef. 8-23-96; OSU 4-1997, f. & cert. ef. 4-21-97; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0038

Prohibition

No person shall consume or carry an open container containing alcohol in any form or serve alcoholic beverages on campus except as provided in these rules and in OAR 576-018-0230 to 0260, and 576-015-0015. Copies are available through the Student Conduct office and the Oregon Administrative Rules website.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1990, f. & cert. ef. 8-22-90; OSU 12-1996, f. & cert. ef. 8-23-96; OSU 4-1997, f. & cert. ef. 4-21-97; OSU 2-1998, f. & cert. ef. 6-12-98; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0039

Enforcement

- (1) Any person or entity violating these rules is subject to:
 - (a) Institutional disciplinary proceedings, if a student or employee;
 - (b) Forfeiture of deposits or ticket costs;
 - (c) An order to leave the immediate premises or property owned or controlled by the University by a person in charge of University property.
- (2) Persons failing to comply with an order by a person in charge to leave or to remain off the immediate premises or property owned or controlled by the University are subject to arrest for criminal trespass.

Stat. Auth.: ORS 164.205(5) & 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1990, f. & cert. ef. 8-22-90; OSU 12-1996, f. & cert. ef. 8-23-96; OSU 4-1997, f. & cert. ef. 4-21-97; OSU 2-1998, f. & cert. ef. 6-12-98; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

576-060-0040

Evaluation of Rules

This policy will be reviewed by the President or designee as needed.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1988, f. 8-19-88, cert. ef. 9-1-88; OSU 3-1989, f. & cert. ef. 5-30-89; OSU 12-1996, f. & cert. ef. 8-23-96; OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08

Oregon University System, University of Oregon Chapter 571

Rule Caption: Simplify and clarify articles and activities prohibited at athletic facilities.

Adm. Order No.: UO 3-2008(Temp)

Filed with Sec. of State: 6-18-2008

Certified to be Effective: 6-18-08 thru 12-10-08

Notice Publication Date:

Rules Amended: 571-050-0011

Subject: Simplify and clarify articles and activities prohibited at athletic facilities and bring rules into accord with Oregon University System administrative rules.

Rules Coordinator: Deb Eldredge—(541) 346-3082

571-050-0011

Articles and Activities Prohibited at Athletic Facilities

(1) The following items are not allowed inside (or on the rampways, stairways, or tunnels leading into) any University facility which serves as a site for intercollegiate athletic competition whether or not such competition is actually occurring:

- (a) Glass containers of any kind;
- (b) Metal cans;
- (c) Weapons;
- (d) Fireworks, explosives, or munitions;
- (e) Alcohol or alcoholic beverages or freezers;
- (f) Vacuum bottles and other similar insulated containers (thermos-type containers);

(g) Open plastic beverage containers, unless empty.

(2) Exceptions to the above prohibition are limited to:

(a) Alcoholic beverages and alcoholic beverage containers belonging to the University of Oregon, or to licensed concessionaires or catering services contracting with the University for its officially sponsored social functions, e.g., receptions, meetings, promotional activities, etc.;

(b) Weapons of on duty law enforcement officials;

(c) Fireworks in the custody of any group or person operating or presenting a fireworks display as expressly authorized by the University.

(3) University employees, contractors, or agents may request, as a condition of the license to enter the University's athletic facilities, that persons about to enter allow inspections of all backpacks, briefcases, suitcases, athletic bags, packages, duffle bags, coolers, ice chests, picnic baskets, and other containers capable of concealing prohibited articles:

(a) Inspections under this section shall occur outside the facility's ticket gate or entrance. Persons possessing containers subject to inspection shall be informed that they are free to decline the inspection and may receive a refund of the price of the ticket upon surrender of their ticket, if any. In the alternative, the person may discard the container or prohibited items in the container or return them to a vehicle without inspection and then enter the facility without such items;

(b) Personnel making inspection requests are not obliged to cause entering spectators to wait in line while other inspections are occurring. Such personnel must, however, request to inspect the containers of the next

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person who appears to possess containers subject to inspection as soon as they have completed any given inspection;

(c) Signs with lettering no smaller than two inches high shall be prominently displayed at each entrance to University facilities that serves as a site for intercollegiate athletic competition. The signs shall generally describe prohibited articles, explain the potential request for inspection and the right-to-decline options, including refund, if there is a cost for admission. Similar explanations shall be printed on season ticket order forms and shall be displayed at ticket windows on University property where tickets for events at University athletic facilities are regularly sold.

(4) A person discovered during an inspection to possess a prohibited article(s) shall be offered the choice of discarding the article(s) in a public trash receptacle or of returning the prohibited article(s) to a vehicle or otherwise legally disposing of it.

(5) If a person already inside the facility possesses a prohibited article, that person shall be considered to have violated the license to enter and view the event. The person's license is automatically revoked and the person shall be requested to leave immediately. A person who does not leave following such a request may be treated as a trespasser.

(6) If a person requests a refund under the provisions of subsection (3)(a) of this rule, University officials shall sign a bearer coupon and shall deliver it within a reasonable time to the person requesting the refund. Such a coupon shall not name the person possessing the prohibited articles, but it shall specify the location, price and date. This bearer coupon along with the unused ticket must be turned in at (or mailed to) the University Athletic Department's ticket office for a refund within 30 days. Service and other charges in excess of the admission price are non-refundable.

(7) Persons entering a facility, as a condition of the license to enter, may be subject to search by electronic wand regardless of whether they are carrying any of the above-mentioned containers.

(8) A person entering the facility who is observed without inspection possessing a prohibited article shall be treated as specified in section (4) of this rule.

(9) Open umbrellas are prohibited in all Autzen Stadium, Hayward Field and Howe Field seating areas, seating area aisles, and standing room only locations. Signs on sticks or poles and signs larger than 24 inches wide by 18 inches high are prohibited in all athletic facilities. Complaints about violations of this section shall be made to Athletic Department officials or their designated agents. Violators failing to respond to a request to close their umbrellas by Athletic Department officials or their agents may be required to leave the event. Any one who violates the restrictions on signs in this rule may be required to leave the event by Athletic Department officials or their agents.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 351.065 & 352.010

Hist.: UOO 7-1983(Temp), f. & cert. ef. 8-15-83; UOO 4-1984, f. & cert. ef. 7-31-84; UOO 5-1990, f. & cert. ef. 5-18-90; UO 3-2000(Temp), f. 9-20-00, cert. ef. 9-20-00 thru 3-18-01; Administrative correction 6-21-01; UO 17-2007, f. & cert. ef. 8-31-07; UO 3-2008(Temp), f. & cert. ef. 6-18-08 thru 12-10-08

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

Adm. Order No.: UO 4-2008

Filed with Sec. of State: 6-27-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 3-1-2008

Rules Amended: 571-060-0005

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

Rules Coordinator: Deb Eldredge—(541) 346-3082

571-060-0005

Special Fees, Fines, Penalties, Service Charges

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

(1) The fees, fines, penalties and service charges listed by reference in this rule are updated annually and copies are on file in the listed departments by July 1.

(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs

also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed with in the master copy.

(4) University departments charging fees shall maintain a copy of at least that department's section of the list of special fees, fines, penalties and service charges including any updates made during the course of the fiscal year. The list and all current changes shall be available upon request to any person during regular departmental business hours.

(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15 days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

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

Stat. Auth.: ORS 351.070, 351 & 352

Stats. Implemented: ORS 351.070

Hist.: UOO 20, f. & cert. ef. 4-27-76; UOO 34(Temp), f. & cert. ef. 8-8-77; UOO 37, f. & cert. ef. 9-30-77; UOO 3-1978, f. & cert. ef. 7-1-78; UOO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UOO 4-1979, f. & cert. ef. 10-3-79; UOO 7-1980, f. 6-30-80, ef. 7-1-80; UOO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UOO 9-1981(Temp), f. & cert. ef. 6-29-81; UOO 2-1982, f. & cert. ef. 4-14-82; UOO 4-1982, f. & cert. ef. 6-10-82; UOO 4-1983, f. & cert. ef. 6-10-83; UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85; UOO 1-1986, f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert. ef. 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UO 1-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2004, f. 5-11-04, cert. ef. 7-1-04; UO 3-2004, f. 6-30-04, cert. ef. 7-1-04; UO 6-2007, f. & cert. ef. 2-22-07; UO 8-2007, f. & cert. ef. 3-12-07; UO 9-2007, f. 5-10-07, cert. ef. 6-29-07; UO 11-2007, f. 6-19-07, cert. ef. 6-29-07; UO 2-2008, f. 5-6-08, cert. ef. 7-1-08; UO 4-2008, f. 6-27-08, cert. ef. 7-1-08

Public Utility Commission Chapter 860

Rule Caption: In the Matter of a Rulemaking to Update Division 029 Rules.

Adm. Order No.: PUC 3-2008

Filed with Sec. of State: 7-8-2008

Certified to be Effective: 7-8-08

Notice Publication Date: 5-1-2008

Rules Adopted: 860-029-0100

Rules Amended: 860-029-0001

Subject: The amendment to OAR 860-029-0001 brings the rule into compliance with Section 27(4) of Senate Bill 838 signed into law June 6, 2007. The addition of OAR 860-029-0100 clarifies the scope of complaint proceedings relating to negotiated Qualifying Facility (QF) power purchase agreements, establishes a dispute resolution process and identifies the responsibilities of those involved in the complaint.

Rules Coordinator: Diane Davis—(503) 378-4372

860-029-0001

Purpose

The purpose of this Division is to implement ORS 758.505 through 758.555 and to implement regulations relating to electric utilities and qualifying cogeneration and small power production facilities as provided under Section 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617 (16 USC 824a-3).

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

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Stat. Auth.: ORS 183, 756, 757 & 758
Stats. Implemented: ORS 756.040, 757.612 & 758.505 - 758.555
Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 3-2008, f. & cert. ef. 7-8-08

Secretary of State, Corporation Division Chapter 160

860-029-0100

Resolution of Disputes for Proposed Negotiated Power Purchase Agreements

(1) This rule applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a Qualifying Facility power purchase agreement. These provisions supplement the generally applicable hearing procedures contained in OAR chapter 860, divisions 011 through 014.

(2) Before a complaint is filed with the Commission, the Qualifying Facility must have followed the procedures set forth in the applicable public utility's tariff regarding negotiated power purchase agreements.

(3) At any time after sixty calendar days from the date a Qualifying Facility has provided written comments to the public utility regarding the public utility's draft power purchase agreement, the Qualifying Facility may file a complaint with the Commission asking for adjudication of any unresolved terms and conditions of its proposed agreement with the public utility.

(4) A Qualifying Facility filing a complaint under this rule is the "complainant." The public utility against whom the complaint is filed is the "respondent."

(5) The complaint must contain each of the following, as described by the complainant:

(a) A statement that the Qualifying Facility provided written comments to the utility on the draft power purchase agreement at least 60 calendar days before the filing of the complaint.

(b) A statement of the attempts at negotiation or other methods of informal dispute resolution undertaken by the negotiating parties.

(c) A statement of the specific unresolved terms and conditions.

(d) A description of each party's position on the unresolved provisions.

(e) A proposed agreement encompassing all matters, including those on which the parties have reached agreement and those that are in dispute.

(6) Along with the complaint, the Qualifying Facility must submit written direct testimony that includes all information upon which the complainant bases its claims.

(7) Within 10 calendar days of service of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions. The respondent may also identify and present any additional issues for which the respondent seeks resolution.

(8) Along with its response the respondent must submit written direct testimony that includes all information upon which the respondent relies to support its position.

(9) An assigned Administrative Law Judge (ALJ) will conduct a conference with the parties to identify disputed issues, to establish a procedural schedule and to adopt procedures for the complaint proceeding. To accommodate the need for flexibility and to implement the intent of this streamlined complaint process, the ALJ retains the discretion to adopt appropriate procedures provided such procedures are fair, treat the parties equitably, and substantially comply with this rule. Such procedures may include, but are not limited to, hosting a technical workshop, holding a hearing, or submitting written comments.

(10) Only the counterparties to the agreement will have full party status. The ALJ may confer with members of the Commission Staff for technical assistance.

(11) After the hearing, or other procedures set forth in section (9), if the Commission determines that a term or provision of the proposed agreement is not just, fair, and reasonable, it may reject the proposed term or provision and may prescribe a just and reasonable term or provision. The Commission's review is limited to the open issues identified in the complaint and in the response.

(12) Within 15 business days after the Commission issues its final order, the public utility must prepare a final version of the power purchase agreement complying with the Commission decision and serve it upon the Qualifying Facility. Within 10 days of service of the final power purchase agreement, the Qualifying Facility and the public utility may sign and file the agreement with the Commission, may request clarification whether the agreement terms comply with the Commission order, or may apply for rehearing or reconsideration of the order. The terms and conditions in the power purchase agreement will not be final and binding until the agreement is executed by both parties.

(13) The provisions of any power purchase agreement approved pursuant to this rule apply only to the parties to the agreement and are not to be considered as precedent for any other power purchase agreement negotiation or adjudication.

Stat. Auth.: ORS 183 & 756
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
PUC 3-2008, f. & cert. ef. 7-8-08

Rule Caption: Oregon's Administrative Rules for UCC filings under ORS Ch. 79.

Adm. Order No.: CORP 4-2008

Filed with Sec. of State: 7-15-2008

Certified to be Effective: 8-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 160-040-0404, 160-040-0505, 160-040-0506, 160-040-0204, 160-040-0205

Rules Amended: 160-040-0100, 160-040-0101, 160-040-0102, 160-040-0103, 160-040-0104, 160-040-0105, 160-040-0106, 160-040-0107, 160-040-0200, 160-040-0201, 160-040-0202, 160-040-0203, 160-040-0300, 160-040-0301, 160-040-0302, 160-040-0303, 160-040-0304, 160-040-0305, 160-040-0306, 160-040-0307, 160-040-0308, 160-040-0309, 160-040-0310, 160-040-0311, 160-040-0312, 160-040-0400, 160-040-0401, 160-040-0402, 160-040-0403, 160-040-0500, 160-040-0501, 160-040-0502, 160-040-0503, 160-040-0504

Subject: This rule updates the rules administering the Secured Transactions Article 9 of the Uniform Commercial Code. It follows the Model Administrative Rules adopted by the International Association of Commercial Administrators, harmonizing Oregon's regulations with the common practice of the other states, in accordance with ORS Ch. 79.0526(2)(b).

Rules Coordinator: Tom Wrosch—(503) 986-2371

160-040-0100

Definitions

Terms used in these filing-office rules but not defined in this section that are defined in the UCC must have the respective meanings accorded such terms in the UCC.

(1) "Active record" means an initial filing that has not yet lapsed on its lapse date, or a continuation that has not lapsed, and any lapsed filing up to the first anniversary of its lapse date.

(2) "Address" means either a) a street address, route number (may include box) or PO Box number plus the city, state and zip code, or b) an address that purports to be a mailing address outside the United States of America.

(3) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

(4) "Assignment" is an amendment that assigns all or a part of a secured party's secured interest in collateral named in a financing statement.

(5) "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed. A debtor may file a correction statement to notify the public that the debtor believes the information on record is inaccurate or that the record was wrongfully filed. The filing of a correction statement does not affect the status of any UCC filing, nor does the filing officer effect changes on the index as a result of a correction statement. A secured party should file a UCC-3 amendment form if the secured party wants to change or correct an existing filing.

(6) "Filing office" and "filing officer" mean the Secretary of State, Corporation Division; the Division Director and deputies of the Director, respectively.

(7) "Filing officer statement" means a statement entered into the filing office's information system to correct an error made by the filing office.

(8) "Individual" means a human being or a decedent in the case of a debtor that is such decedent's estate.

(9) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(10) "Organization" means a legal person who is not an individual under (8).

(11) "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

(12) "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.

(13) "Secured party of record" includes a secured party of record as defined in the UCC, as well as a person who has been a secured party of

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record with respect to whom an amendment has been filed purporting to delete them as a secured party of record.

(14) "UCC" means the Uniform Commercial Code as adopted in this state.

(15) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement, or a correction statement, and includes a record thereof maintained by the filing office. The term shall not be deemed to refer exclusively to paper or paper-based writings.

(16) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system, which has not yet lapsed under ORS Ch. 79.0515 with respect to all secured parties of record.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0526

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 3-2001 f. 12-14-01 cert. ef. 1-1-02; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0101

UCC Document Delivery

For the purposes of this section, "delivery" means receipt by the filing office. UCC records may be tendered for filing at the filing office as follows.

(1) Personal delivery, at the filing office's street address. The file time for a UCC record delivered by this method is when delivery of the UCC record is accepted by the filing office (even though the UCC record may not yet have been accepted for filing and subsequently may be rejected).

(2) Courier delivery, at the filing office's street address. The file time for a UCC record delivered by this method is the time the UCC record is first examined by a filing officer for processing within the next close of business following the time of delivery, (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected).

(3) Postal service delivery, to the filing office's mailing address. The file time for a UCC record delivered by this method is the time the UCC record is first examined for processing within the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected).

(4) Fax delivery, to the filing office's fax filing telephone number. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, the time the UCC record is first examined by a filing officer for processing (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected).

(5) Means of communication. Regardless of the method of delivery, information for recording in the UCC information management system should be communicated to the filing only in the form of the English alphabet A - Z, numbers 0 - 9, and symbols and characters found on a standard QWERTY keyboard. A financing statement or amendments form that does not designate separate fields for organization and individual names, and separate fields for first, middle and last names and suffixes for individual names is not an acceptable means of communication to the filing office.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0526

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0102

Search Request Delivery

UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. A search request may not be delivered by checking a box or otherwise including a search request in or on an initial financing statement, but may be delivered in or on a separate search request after the initial financing statement is filed.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0523

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0103

Forms

(1) Acceptable forms. In addition to the forms outlined in ORS 79.0521(1), the Secretary of State shall accept for filing only the standard forms approved for use by the International Association of Commercial Administrators up to August 1, 2006.

(2) Renewal notice. The renewal notice supplied under ORS Ch. 79.0515 shall not be construed as a form for filing purposes. The only form in which to file a continuation shall be the UCC Financing Statement Amendment provided in (1):

(a) Address. The address used to mail renewal notices shall be the secured party name and address of record. If the secured party has not specifically filed an amendment showing a change in address, the renewal notice shall be sent to the address of record, regardless of what may show on continuations, renewals, or other filings;

(b) Returned mail. The UCC Section may attempt to trace or obtain an accurate name or address and/or resend a renewal notice returned because of incorrect name or address.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0515 & 79.0521

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 1-2002, f. 11-15-02, cert. ef. 12-1-02; CORP 1-2005, f. & cert. ef. 2-1-05; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0104

Fees

(1) Filing fee. The fee for filing and indexing a UCC record is prescribed in ORS Ch. 79.525(1).

(2) UCC search fee. The fee for a UCC search request is prescribed in ORS Ch. 79.525(3).

(3) UCC search — copies. The fee for UCC search copies is prescribed in ORS Ch. 79.525(3).

(4) UCC search — state seal certificate. The fee for a state seal certificate is \$10 per certificate, plus (for requested copies) — \$5 per document number.

Stat. Auth.: 2001 SB 171 Sec. 97.9-526

Stats. Implemented: 2001 SB 171 Sec. 96.9-525

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0105

Methods of Payment

Filing fees and fees for public records services may be paid by the following methods.

(1) Cash. Payment in cash shall be accepted if paid in person at the filing office.

(2) Checks. Personal checks, cashier's checks and money orders made payable to the filing office shall be accepted for payment provided that the drawer (or the issuer in the case of a cashier's check or money order) is deemed creditworthy by the filing office in its discretion.

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(4) Debit and/or credit cards. The filing office shall accept payment by debit cards and credit cards issued by approved issuers. Remitters shall provide the filing officer with the card number and the expiration date of the card. Payment will not be deemed tendered until the issuer or its agent has confirmed payment.

(5) Prepaid account. A remitter may open an account for prepayment of fees associated with summaries of records by submitting an application prescribed by the filing officer and prepaying the appropriate weekly or monthly fee per file, according to the schedule found in OAR 160-040-0107. The remitter will be sent a monthly statement of the deductions from their account.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0525

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0106

Summaries of Records

Public records services are provided on a non-discriminatory basis to any member of the public on the terms described in these rules. The following methods are available for obtaining copies of UCC records and copies of data from the UCC information management system.

(1) Individually identified records. Copies of individually identified UCC records are available in paper format.

(2) Bulk copies of records. Bulk copies of UCC records are available by weekly subscription.

(3) Data from the information management system. A list of available data elements from the UCC information management system, and the file layout of the data elements, is available from the filing officer upon request. Data from the information management system is available as follows.

(a) Full extract. A bulk data extract of information from the UCC information management system is available. The UCC Active Filing List contains all active UCC filings, and is provided weekly or monthly by subscription.

(b) New Filing lists. The UCC New Filings List is provided weekly or monthly by subscription.

(c) Custom Extracts. Specialized searches on data stored in the UCC database. Custom searches are limited to one secured party name per search fee. Requests for information based on cities or zip codes is limited to 5 cities or 5 zip codes per search fee. Information on custom searches will be provided in tab delimited text format or MS Excel on CD ROM, FTP or by e-mail.

(d) Format. Extracts from the UCC information management system are available in the following formats.

(A) CD-ROM — UCC New Filings List & UCC Custom Search (tab-delimited text — .txt).

(B) FTP — Bulk UCC image extracts (.tif) and UCC Data extracts (tab-delimited text — .txt).

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(C) E-Mail — UCC New Filings List & UCC Custom Search (tab delimited text — .txt).
(D) Internet Download — Bulk UCC image extracts (.tif) and UCC Data extracts (tab-delimited text — .txt).
Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0523
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0107

Fees for Summaries of Records

(1) Bulk copies of records. In accordance with ORS Ch. 79.0523(6), copies of UCC filings may be provided at \$20 per week.
(2) Data from the information management system.
(a) Full extract. The UCC Active Filing List fee for this subscription is \$200 per extract
(b) New Filing Lists. The UCC New Filing List fees are \$15 each.
(c) Custom extracts. The UCC Custom Search fee shall be \$50 per search paid in advance.
Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0523 & 79.0525
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0200

Role of Filing Officer

The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to these rules, the filing officer does not:

- (1) Determine the legal sufficiency or insufficiency of a record.
 - (2) Determine that a security interest in collateral exists or does not exist.
 - (3) Determine that information in the record is correct or incorrect, in whole or in part.
 - (4) Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.
- Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.516, 79.519, 79.520
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0201

Time for Filing a Continuation Statement

- (1) First day permitted. The first day on which a continuation statement may be filed is the date six months before the lapse date of the current financing statement.
- (2) Last day permitted. The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses.
- Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0515
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0202

Rejection Reasons

- (1) The reasons for rejecting a filing submitted to the filing officer shall be those listed in Oregon Revised Statute Ch. 79.0516 and as delineated in the Jurisdictions Guidelines for Accepting a UCC Record for Filing Chart, published by the International Association of Commercial Administrators.
- (2) For the purposes of ORS 79.0516(2)(h), collateral “within the scope of this chapter” shall include:
- (a) Interest accounts (79.0310);
 - (b) Tangible chattel paper (79.0312);
 - (c) Electronic chattel paper (79.0312);
 - (d) Commercial tort claim (79.0310);
 - (e) Certain consumer goods interests (79.0310);
 - (f) Negotiable documents (79.0312);
 - (g) Equipment (79.0310);
 - (h) Farm products (79.0310);
 - (i) Certain general intangible transactions (79.0310);
 - (j) Instruments (79.0312);
 - (k) Inventory (79.0310);
 - (l) Interests in investment property created by debtor other than broker or intermediary (79.0312).
- (3) For the purposes of ORS 79.0516(2)(h), factors that indicate “the record is being filed for a purpose not within the scope of this chapter” shall include, but are not limited to:
- (a) Collateral description/attachments that contain:
 - (A) Birth Certificate, Certificate of Live Birth, etc.
 - (B) Driver’s License.
 - (C) Treasury Account number.
 - (D) Employer ID number.
 - (E) Private Setoff Account number.
 - (F) Marriage Certificate number.
 - (G) Bill of Exchange.

- (H) Dollar amount(s) that are disproportionately large.
- (b) References to:
- (A) Public Policy HJR-192, Public Law 73-10.
 - (B) House Joint Resolution 192 of June 1933.
 - (C) UCC 1-103, UCC 1-104, UCC 10-104, UCC 1-201(39), UCC 3-419, UCC-401.
- (c) Words and phrases:
- (A) “Exempt from Levy.”
 - (B) “Exempt from all taxes, burden, charges and duty” or parts thereof.
 - (C) “Accepted for value.”
 - (D) “Actual and Constructive Notice.”
 - (E) “Strawman.”
 - (F) “Non negotiable Notice of Transfer.”
 - (G) “Notice of Dishonor.”
- (4) In determining under ORS 79.0516 whether or not there is one or more grounds to refuse a UCC record, the filing office will refuse a record that does not provide an address that meets the minimum requirements for an address as set forth in these administrative rules.
- (5) In addition to rejection reasons under ORS 79.516, the filing office will refuse a record that contains a Social Security Number, a state identification number, a driver license number, a credit or debit card number or an account number that is not redacted so that not more than the last four digits of a number are accessible.
- Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 56.037 & 79.0516
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 1-2002, f. 11-15-02, cert. ef. 12-1-02; CORP 2-2004, f. & cert. ef. 9-1-04; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0203

Procedure Upon Refusal

If the filing officer finds grounds to refuse a UCC record, communication of the refusal, the reason(s) for the refusal and other related information will be made to the Remitter as soon as practicable and in any event within two business days after the refused UCC record was received by the filing office, by the same means as the means by which such UCC record was delivered to the filing office, or by mail or such more expeditious means as the filing office shall determine. Records of the refusal, including a copy of the refused UCC record and the ground(s) for refusal, must be maintained for 90 days after the date of the refusal notice.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0520
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0204

Refusal Errors

If, within ninety days of the date of the refusal notice, a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused, the filing officer will file the UCC record with the filing date and time the UCC record was originally tendered for filing. The filing officer shall also file a filing officer statement noting when and why the record was changed.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0520
Hist.: CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0205

Notification of Defects

Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0520
Hist.: CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0300

Policy Statement

The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which have not lapsed. The rules in this section describe the UCC information management system.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0519
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0301

Primary Data Elements

The primary data elements used in the UCC information management system are the following.

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(1) Identification numbers.

(a) Initial financing statements. Each initial financing statement is identified by its file number. Identification of the initial financing statement is stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

(b) Other UCC records. A UCC record other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC records other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of record. The type of UCC record from which data is transferred is identified in the information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC records are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC records to the UCC information management system using one or more data entry or transmittal techniques.

(5) Status of financing statement. In the information management system, each financing statement has a status of active or inactive.

(6) Page count. The total number of pages in a UCC record is maintained in the information management system.

(7) Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in rule 160-040-0400.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0519

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0302

Individual Debtor Names

For purposes of these rule, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Individual name fields. Individual debtor names are stored in files that include only the individual debtor names, and not organization debtor names. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. The name of a debtor with a single name (e.g., "Cher") is treated as a last name and shall be entered in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(2) Titles, prefixes and suffixes. Titles, prefixes (e.g. "Ms.") and suffixes or indications of status (e.g. "M.D.") are not typically part of a debtor's name. However, when entering a "name" into the UCC information management system, the data will be entered exactly as they appear.

(4) Truncation — individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The length of data entry name fields are as follows.

(a) First name: 20 characters.

(b) Middle name: 40 characters.

(c) Last name: 40 characters.

(d) Suffix: 10 characters.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0519

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0303

Organization Debtor Names

For purposes of these rules, an "organization debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Single field. Organization debtor names are stored in files that include only organization debtor names and not individual debtor names. A single field is used to store an organization debtor name.

(2) Truncation organization names. The organization debtor name field in the UCC database is fixed in length. The maximum length is 250 characters. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the organization debtor name field.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0519

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0304

Estates

The debtor name to be provided on a financing statement for a debtor that is an estate is the name of the relevant decedent. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the filer should provide the debtor name as an individual debtor name. However, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.519

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0305

Trusts

If the trust is named in its organic record(s), its full legal name, as set forth in such record(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC record that uses a settlor's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If this is done in, or as part of, the name of the debtor, it will be entered as if it were a part of the name under rule 160-040-0402.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.519

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0306

Initial Financing Statement

Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows.

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC information management system so long as the financing statement is an Active Record.

(3) Status of financing statement. The financing statement shall be an Active Record. A lapse date shall be calculated, five years from the file date, unless (i) the initial financing statement indicates as provided in rule 0306(4) that it is filed with respect to a public-financing transaction in which case the lapse date shall be thirty years from the file date, or (ii) the initial financing statement indicates as provided in rule 0306(4) that it is filed against a transmitting utility, in which case there shall be no lapse date.

(4) Transmitting utility and public-finance transactions. The only means to indicate to the filing office that an initial financing statement is being filed in connection with a public-finance transaction, or that a financing statement is being or has been filed against a debtor that is a transmitting utility, to affect the filing office's determination of the lapse date under rule 0306(3) or 0307, is to so indicate by checking the appropriate box on a UCC1 Addendum filed with respect to the financing statement or by transmitting the requisite information in the proper field in an electronic filing that is such initial financing statement or is part of such financing statement.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0519

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 3-2001 f. 12-14-01 cert. ef. 1-1-02; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0307

Amendment

Upon the filing of an amendment the status of the parties and the status of the financing statement shall be as follows.

(1) Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

(a) Collateral amendment or address change. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by fewer than all of the secured parties (or, in the case of an amendment that adds collateral, fewer than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).

(b) Debtor name change. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the

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related initial financing statement and all UCC records that include an identification of such initial financing statement shall be cross indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC records. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

(c) Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

(d) Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

(e) Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

(f) Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(g) Deletion of a secured party. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

(2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0512

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0308

Assignment of Powers of Secured Party of Record

(1) Status of the parties. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

(2) Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0514

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0309

Continuation

(1) Continuation of lapse date. Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be extended for five years.

(2) Status of parties. The filing of a continuation shall have no effect upon the status of any party to the financing statement.

(3) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement remains active.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0510 & 79.0526

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0310

Termination

(1) Status of parties. The filing of a termination shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until the lapse date, and accessible until one year after it lapses.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0510 & 79.0526

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 3-2001 f. 12-14-01 cert. ef. 1-1-02; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0311

Correction Statement

(1) Status of parties. The filing of a correction statement shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A correction statement shall have no effect upon the status of the financing statement.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0518

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0312

Procedure Upon Lapse

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date and the information management system renders or is caused to render the financing

statement inactive. On the first anniversary of such lapse date, the financing statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.515 & 79.526

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 3-2001 f. 12-14-01 cert. ef. 1-1-02; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0400

Lapse Date and Time

A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a public finance transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at the end of the business day of the lapse date. The relevant anniversary for a February 29 filing date shall be the March 1 in the fifth year following the year of the filing date.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0515

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0401

Errors of the Filing Officer

The filing office may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification date that includes the filing date of the corrected document, the filing officer shall enter a filing officer statement in the UCC information management system identifying the record to which it relates, stating the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0515

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0402

Data Entry of Names

A filing should designate whether a name is a name of an individual or an organization. Filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective.

(1) Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included in the field designated for an organization name.

(2) Individual names. On a form that designates separate fields for first, middle, and last names and any suffix, the filing officer enters the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.

(3) If a UCC record is tendered that provides characters not permitted under rule 0101(5), and the filing office nevertheless accepts the form for filing, the filing office will substitute in its information management system, for each such character, the character of the English alphabet A - Z, and symbols found on a standard QWERTY keyboard, that is its closest visual counterpart.

Example: an "e" will be entered as an "e". A "i" will be entered as a "i". "©" would not be entered at all and the filing will be rejected.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0519

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0403

Notice of Bankruptcy

The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Accordingly, financing statements will lapse as scheduled unless properly continued.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0522

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0404

Redaction of Certain Information

The filing officer is obliged to redact certain information from the information it provides to searchers and bulk data purchasers in accordance with ORS 56.037. Such information should not be included in UCC records and will be redacted in accordance with such laws.

Stat. Auth.: ORS 79.0526

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Stats. Implemented: ORS 56.037
Hist.: CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0500

General Requirements

The filing officer maintains for public inspection a searchable index for all Active Records in the UCC information management system. Active Records will be retrievable by the name of the debtor or by the file number of the related initial financing statement, and each Active Record related to an initial financing statement is retrieved with the initial financing statement using either retrieval method.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0523
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0501

Search Requests

Search requests shall contain the following information.

(1) Name searched. A search request must set forth the name of the debtor to be searched using designated fields for organization and individual first, middle and last names. A search request will be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is the subject of the search.

(2) Requesting party. The name and address of the person to whom the search results is to be sent.

(3) Fee. The appropriate fee shall be tendered by a method described in rule 160-040-0105.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0523
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0502

Search Requests — Optional Information

A UCC search request may contain any of the following information.

(1) Copy request. The request may ask for copies of UCC records identified on the primary search response.

(2) Mode of delivery. A search request may specify a mode of delivery for search results and that request will be honored if the requested mode is made available by the filing office, and all requisite fees are tendered.

(3) Scope of search. A search request may ask for a search that reports all Active Records retrieved by the search rather than only Unlapsed Records retrieved by the search.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0523
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0503

Rules Applied to Search Requests

Search results are produced by the application of standardized search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search. The following rules apply to searches:

(1) Number of matches. There is no limit to the number of matches that may be returned in response to the search criteria.

(2) Case. No distinction is made between upper and lower case letters.

(3) “&” (and). The character “&” (the ampersand) is deleted and replaced with the characters “and” each place it appears in the name.

(4) Punctuation. Punctuation marks and accents are disregarded. For the purposes of this rule, punctuation and accents include all characters other than the numerals 0 through 9 and the letters A through Z (in any case) of the English alphabet.

(5) Organization names. The following words and abbreviations at the end of an organization name that indicate the existence or nature of the organization are “disregarded” to the extent practicable as determined by the filing office’s programming of its UCC information management system: regon “Ending Noise Words” List: [List not included. See ED. NOTE.]

(6) “The.” The word “the” at the beginning of an organization debtor name is disregarded.

(7) Spaces. All spaces are disregarded.

(8) First and middle names. For first and middle names of individual debtor names, initials are treated as the logical equivalent of all names that begin with such initials, and first name and no middle name or initial is equated with all middle names and initials. For example, a search request for “John A. Smith” would cause the search to retrieve all filings against all individual debtors with “John” or the initial “J” as the first name, “Smith” as the last name, and with the initial “A” or any name beginning with “A” in the middle name field. If the search request were for “John Smith” (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with “John” or the initial J as the first name, “Smith” as the last name and with any name or initial or no name or initial in the middle name field.

(9) Last name only. If the name being searched is the last name of an individual debtor name without any first or middle name provided, the search will retrieve from the UCC information management system all Unlapsed Records or, if requested by the searcher, all Active Records that pertain to financing statements with individual debtor names that consist of such last name, any or no middle name or initial and no first name.

(10) Suffixes. Suffixes of individual names, such as “Jr.” and “III” will be disregarded as search criteria.

(11) After using the preceding rules to modify the name being searched, the search will retrieve from the UCC information management system all Unlapsed Records, or, if requested by the searcher, all Active Records, that pertain to financing statements with debtor names that, after being modified as provided in this rule 503, exactly match the modified name being searched.

[ED. NOTE: List referenced are available from the agency.]
Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0506, 79.0523
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0504

Notice of Changes

Changes in standard search logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that could alter search results, the filing office will provide public notice of such change.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0506, 79.0523
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 3-2001 f. 12-14-01 cert. ef. 1-1-02; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0505

Search Responses

Reports created in response to a search request shall include the following.

(1) Filing officer. Identification of the filing officer responsible for search report.

(2) Report date. The date and time the report was generated.

(3) Name searched. Identification of the name searched.

(4) Unique search report identification number. Unique number which identifies the search report.

(5) Through date. The date at or prior to which a UCC record must have been filed with the filing office in order for it to be reflected on the search.

(6) Copies. Copies of all UCC records revealed by the search and requested by the searcher. Copies of all UCC records retrieved by the search will reflect any redaction of personal identifying information required by law.

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0523
Hist.: CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

160-040-0506

Search Report

The search report shall contain the following.

(1) Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria (including whether the searcher has requested Active Records or only Unlapsed Records). Financing statement information shall include, but is not limited to the following:

(a) Initial financing statement file number. The initial financing statement file number.

(b) Initial financing statement filing date. The date it was filed.

(c) Lapse date. Provide lapse date as calculated as of the through date established under rule 505(5).

(2) Debtor name. The debtor name(s) that appear(s) of record.

(3) Debtor address. The debtor address(s) that appear(s) of record.

(4) Secured party name. The secured party name(s) that appear(s) of record.

(5) Secured party address. The secured party address(es) that appear(s) of record.

(6) Amendment type. An indication of type of each amendment, if any.

(7) Amendment filing date and time. The date and time each amendment, if any, was filed.

(8) Amendment file number. The amendment file number of each amendment, if any.

(9) Correction statement filing date and time. The date and time a correction statement, if any, was filed.

(10) Filing officer statement filing date and time. The date and time a filing officer statement, if any, was filed.

(11) Filing Type. The type of filing, including UCC financing statement, type of statutory lien or warrant, or EFS filing.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 79.0526
Stats. Implemented: ORS 79.0523
Hist.: CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08

Water Resources Department Chapter 690

Rule Caption: Special area standard for water supply well construction and maintenance.

Adm. Order No.: WRD 2-2008

Filed with Sec. of State: 6-18-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 690-215-0200

Rules Amended: 690-200-0028, 690-200-0050, 690-210-0280, 690-215-0060, 690-215-0080

Subject: The Water Resources Commission (Commission) adopted rules that establish special area standards for water supply well construction and maintenance in the Eola Hills Ground Water Limited Area and Pete's Mountain Area. Specifically, the rules require that all wells within both areas have a minimum of 3/4 inch dedicated measuring tube installed at the time of pump installation, pump repair or pump replacement to give the Department access necessary to gather essential water level data. Additionally, these standards require that all new and deepened water supply wells that develop water from basalt within the Eola Hills Ground Water Limited Area be constructed with casing and seal to within 100 feet of the bottom of the well. Additionally, in both areas new wells require a six inch diameter casing.

Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-200-0028

Designated Special Area Standards

(1) Special Area Standards for the Construction and Alteration of Water Supply Wells in the Lakeview Area.

(a) As used in this rule and illustrated in Figure 200-3, "The Lakeview Area" includes the area located in Sections 4, 5, 8 and 9 of Township 39 South, Range 20 East of the Willamette Meridian, Lake County, Oregon. Beginning at a point on the West line of Section 4, said point bears South 1 40' 45" East - 2245.31 feet from the Northwest Corner of Section 4; thence South 89 54' 45" East - 1907.04 feet to the West right of way line of the Fremont Logging Road; thence South 39 26' 40" East along the West right of way line of the Fremont Logging Road - 3095.16 feet; thence South 1 53' 14" East - 617.32 feet to the South line of Section 4; thence continuing in Section 9 - South 00 13' 8" West parallel to the North South centerline of Section 9 - 2649.14 feet to the East West centerline of Section 9; thence South 89 45' 31" West along the East West centerline of Section 9 - 3782.55 feet more or less to the West line of Section 9; thence West along the East West centerline of Section 8 - 1320.00 feet more or less to the center East 1/16 corner of Section 8; thence North 2640.00 feet more or less to the East 1/16 corner common to Sections 5 and 8; thence North 1 41' 33" West - 2630.48 feet more or less to the center East 1/16 corner of Section 5; thence North 1 40' 45" West - 410.32 feet; thence South 59 54' 45" East - 1307.02 feet more or less to the point of beginning.

(b) Any new, altered, deepened or converted well in the sedimentary units (clay, sand, silt, gravel) in the Lakeview Area shall be cased and sealed according to OAR 690, Division 210 with the following additional requirements:

(A) Unperforated casing and seal shall extend from land surface to a depth of 250 feet below land surface; and

(B) Perforated casing may extend below the seal.

(c) Liner installed in any new, altered, deepened or converted well in the sedimentary units (clay, sand, silt, gravel) in the Lakeview Area shall not extend more than 10 feet above the bottom of the unperforated casing.

(d) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in subsection (1)(b) and (1)(c) above. Such alternatives require prior written approval by the Department and follow-up testing as may be required by the Department.

(e) Except as they may conflict with subsection (1)(b) and (1)(c), all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

(f) This rule is applicable to wells for which construction, alteration, deepening or conversion began on or after April 1, 2004.

(g) This special area standard may be revised at a future date when additional information and analysis is provided from other agencies including the Oregon Department of Environmental Quality.

(2) Special Area Standards for the Construction, Conversion and Maintenance of Water Supply Wells for the "Petes Mountain Area", Clackamas County.

(a) As used in this rule and illustrated in Figure 200-4, "The Petes Mountain Area" includes the area located in Sections 28, 29, 32, 33 and 34 Township 2 South, Range 1 East, Willamette Meridian; and Sections 2, 3, 4, 5, 9, 10, 11, 15 and 16, Township 3 South, Range 1 East, Willamette Meridian. Beginning at the intersection of SW Ek Road and SW Stafford Road (T.2 S., R.1 E., Sec. 29); thence southerly along SW Stafford Road to SW Mountain Road; thence southerly along SW Mountain Road to SW Hoffman Road; thence easterly along SW Hoffman Road to the intersection of SW Hoffman Road, SW Petes Mountain Road and SW Riverwood Drive; thence due east to the Willamette River; thence northerly along the Willamette River to the mouth of the Tualatin River; thence northwesterly along the Tualatin River to SW Borland Road (a.k.a. Willamette Falls Drive); thence northwesterly along SW Borland Road to SW Ek Road; thence westerly along SW Ek Road to SW Stafford Road, to the point of beginning.

(b) All new, altered, deepened or converted wells constructed in the Petes Mountain Area shall be cased and sealed in accordance with OAR 690, Division 210 with the following additional requirements:

(A) All new wells shall have a nominal minimum well casing diameter of at least 6 inches.

(B) All wells shall have a minimum 3/4-inch diameter dedicated measuring tube installed at the time of pump installation, pump repair or pump replacement (See Figure 200-5 and OAR 690-215-0200).

(C) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in subsection (2)(b) above. Such alternatives require prior written approval by the Department. In addition, follow-up testing may be required by the Department to insure the effectiveness of the alternative technique.

(D) Except as they may conflict with subsection (2)(b), all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

(E) This rule is applicable to wells for which pump installation, repair or replacement began on or after July 1, 2008.

(F) This special area standard may be revised at a future date when additional information and analysis is provided from other agencies including the Oregon Department of Environmental Quality.

(3) Special Area Standards for the Construction, Conversion and Maintenance of Water Supply Wells for the "Eola Hills Ground Water Limited Area," Polk and Yamhill Counties.

(a) As used in this rule and illustrated in Figure 200-7, "The Eola Hills Ground Water Limited Area" includes all or portions of Sections 4 through 9, 16 through 21, and 29 through 32, Township 6 South, Range 3 West, Willamette Meridian; Sections 3 through 10, 15 through 22, 28, 29 and 30, Township 7 South, Range 3 West, Willamette Meridian; Sections 1 through 5, 8 through 17, 20 through 29, and 32 through 36, Township 6 South, Range 4 West, Willamette Meridian; and Sections 1 through 30, Township 7 South, Range 4 West, Willamette Meridian. The boundary of the Eola Hills area is as follows: Beginning at the intersection of the south line of Township 5 South and U.S. Highway 99W, thence east along the township line to the Willamette River, thence southerly to Oregon State Highway 22, thence westerly to U.S. Highway 99W, thence northerly along Hwy 99W to the point of beginning.

(b) All new, altered, deepened or converted wells constructed in the Eola Hills Ground Water Limited Area shall be cased and sealed in accordance with OAR 690, Division 210 with the following additional requirements:

(A) All new wells shall have a nominal minimum well casing diameter of at least 6 inches.

(B) All wells, in all aquifers, shall have a minimum 3/4-inch diameter dedicated measuring tube installed at the time of pump installation, pump repair or pump replacement (See Figure 200-5 and OAR 690-215-0200).

(C) All new and deepened wells developing water from basalt in the Eola Hills Ground Water Limited Area shall be limited to one aquifer and shall be continuously cased and continuously sealed to within 100 feet of the bottom of the hole.

(c) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in subsection (3)(b) above. Such alternatives require prior written approval by the Department. In addition, follow-up testing may be required by the Department to insure the effectiveness of the alternative technique.

(d) Except as they may conflict with subsection (3)(b), all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

(e) This rule is applicable to wells for which pump installation, repair or replacement began on or after July 1, 2008.

Stat. Auth.: ORS 537.780, 536.027, 536.090

ADMINISTRATIVE RULES

Stats. Implemented: ORS 537.505 - 537.795, 537.780(1)
Hist.: WRD 2-2004, f. & cert. ef. 4-1-04; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

690-200-0050

Definitions

The Water Resources Commission uses the definitions of the words listed below in the administration and enforcement of Oregon's Ground Water Law and the Rules and Regulations for the Construction and Alteration of Wells. No other definitions of these same words apply:

(1) "Abandonment, Permanent" means to remove a well from service by completely filling it in such a manner that vertical movement of water within the well bore and within the annular space surrounding the well casing, is effectively and permanently prevented. If a portion of a well is to be abandoned in order to prevent commingling, waste, or loss of artesian pressure, the abandonment shall conform with the requirements of OAR chapter 690, division 220 for water supply wells. This term is synonymous with "decommission."

(2) "Abandonment, Temporary" means to remove a drilling machine from a well site after completing or altering a well provided the well is not immediately put into service, or to remove a well from service with the intent of using it in the future.

(3) "Access Port" means a minimum 1/2-inch tapped hole and plug, a 1/2-inch capped pipe welded onto the casing in the upper portion of a water supply well, or a dedicated measuring tube to permit unobstructed entry to determine the water level in the well at any time.

(4) "Air Gap" means a complete physical break between the outlet end of the discharge pipe or other conduit and the discharged substance. The break shall be at least twice the inside diameter of the pipe or conduit. (Back-siphon prevention)

(5) "Airline" means a water level measuring device consisting of a pressure gauge attached to an airtight line or pipe of known length, within the water supply well bore, extending from land surface to below the pumping level. The device will allow the water level to be computed by measuring the stable air pressure remaining in the line after completely purging water from within the line.

(6) "Air/Vacuum Relief Valve" means a device to automatically relieve or break vacuum. (Back-siphon prevention)

(7) "Altering a Well" means the deepening, reaming, hydrofracturing, casing, re-casing, perforating, re-perforating, installation of liner pipe, packers, seals, and any other material change in the design or construction of a well.

(8) "Annular Space" means the space between the drillhole wall and the outer well casing.

(9) "Aquifer" means a geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry, and temperature (see Figure 200-2).

(10) "Artesian Aquifer" means a confined aquifer in which ground water is under sufficient head to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface, the well is a flowing artesian well (see Figure 200-2).

(11) "Artesian Water Supply Well" means a water supply well in which ground water is under sufficient pressure to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian water supply well.

(12) "Automatic Low-Pressure Drain" means a self-activating device designed and constructed to intercept incidental leakage and drain that portion of an irrigation pipeline or any other method of conveyance whose contents could potentially enter the water supply when operation of the irrigation system pumping plant fails or is shut down. (Back-siphon prevention)

(13) "Back-Siphon Prevention Device" means a safety device used to prevent water pollution or contamination by preventing flow of a mixture of water and/or chemicals in the opposite direction of that intended. (Back-siphon prevention)

(14) "Bored Well" means a well constructed with the use of earth augers turned either by hand or by power equipment.

(15) "Buried Slab Type Well" means a dug well in which well casing is used to case the upper hole. A slab, sealed with cement grout, is placed between the upper hole and lower drillhole, and the remainder of the annulus is filled with concrete.

(16) "Casing" means the outer tubing, pipe, or conduit, welded or thread coupled, and installed in the borehole during or after drilling to support the sides of the well and prevent caving. Casing can be used, in conjunction with proper seal placement, to shut off water, gas, or contaminated fluids from entering the hole, and to prevent waste of ground water.

(17) "Casing Seal" means the water tight seal established in the well bore between the well casing and the drillhole wall to prevent the inflow and movement of surface water or shallow ground water in the well annu-

lus, or to prevent the outflow or movement of water under artesian or hydrostatic pressures.

(18) "Check Valve" means a certified device designed and constructed to close a water supply pipeline, chemical injection line, or other conduit in a chemigation system to prevent reverse flow in that line. (Back-siphon prevention)

(19) "Chemigation" means the method of applying agricultural chemicals and fertilizer through an irrigation system.

(20) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.002 mm.

(21) "Commission" means the Oregon Water Resources Commission.

(22) "Committee" means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(23) "Community Well" means a water supply well, whether publicly or privately owned, which serves or is intended to serve more than three connections for residences or other connections for the purpose of supplying water for drinking, culinary, or household uses.

(24) "Confined Animal Feeding or Holding Area" means the concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, swine, and dairy confinement areas, slaughterhouse or shipping terminal holding pens where the animal waste is allowed to build up on the ground. Pastures and areas adjacent to buildings where animals and animal waste is confined by a physical barrier such as concrete are exempt.

(25) "Confining Formation" means the "impermeable" stratum immediately overlying an artesian (confined) aquifer (see Figure 200-2).

(26) "Consolidated Formation" means materials that have become firm through natural rock-forming processes. It includes, but is not limited to, such materials as basalt, sandstone, shale, hard claystone, and granite.

(27) "Contamination" means an impairment of water quality by chemicals, radionuclides, biologic organisms or other extraneous matter whether or not it affects the potential or intended beneficial use of water.

(28) "Continuing Education" means that education required as a condition of licensure under ORS 537.747, to maintain the skills necessary for the protection of ground water, the health and general welfare of the citizens of Oregon and the competent practice of the construction, alteration, abandonment, conversion, and maintenance of water supply wells, monitoring wells, and geotechnical holes.

(29) "Continuing Education Committee" means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(30) "Continuing Education Course" means a formal offering of instruction or information to licensees that provides continuing education credits.

(31) "Continuing Education Credit" (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

(32) "Converting" a well means changing the use of an existing well or hole not previously used to either withdraw or monitor water such that the well or hole can be used to either withdraw or monitor water.

(33) "Deepening a well" means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

(34) "Department" means the Oregon Water Resources Department.

(35) "Director" means the Director of the Department or the Director's authorized representatives.

(36) "Documentation of Completion" means written evidence or documentation demonstrating attendance and completion of a continuing education course, including but not limited to: a certificate of completion, diploma, transcript, certified class roster, or other documentation as approved by the Continuing Education Committee.

(37) "Domestic Well" means a water supply well used to serve no more than three residences for the purpose of supplying water for drinking, culinary, or household uses, and which is not used as a public water supply.

(38) "Drawdown" means the difference in vertical distance between the pumping level and the static water level in a well.

(39) "Drive Point Well" means a well constructed by driving into the ground a well-point fitted to the end of a pipe section or series of pipe sections.

(40) "Dug Well" means a well in which the excavation is made by the use of digging equipment such as backhoes, clam shell buckets, or sand buckets. (See Hand dug well)

(41) "Excavation" means a free-standing cavity with greater width than depth constructed in the earth's surface which has a primary purpose other than seeking water or water quality monitoring.

(42) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(43) "Filter Pack Well" means a well in which the area immediately surrounding the well screen or perforated pipe within the water-producing zone is filled with graded granular material.

ADMINISTRATIVE RULES

(44) "Geologic Formation" means an igneous, sedimentary, or metamorphic material that is relatively homogeneous and is sufficiently recognized as to be distinguished from the adjacent material. The term is synonymous with "formation."

(45) "Geologist" means an individual registered by the State of Oregon to practice geology.

(46) "Geotechnical hole" means a hole constructed to collect or evaluate subsurface data or information, monitor movement of landslide features, or to stabilize or dewater landslide features. Geotechnical holes are not monitoring wells or water supply wells as defined below. Various classes and examples of geotechnical holes are listed in OAR 690-240-0035(6)-(9).

(47) "Grout" means approved cement, concrete, or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(48) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(49) "Hand dug well" means a well in which the excavation is only made by the use of picks, shovels, spades, or other similar hand operated implements. (See Dug Well)

(50) "Hazardous Materials Training" means training as defined by OAR 437-002-0100 Adoption by Reference Subdivision H Hazardous Materials 1910.120 Hazardous Waste Operations and Emergency Response.

(51) "Hazardous Waste" means a substance as defined by ORS 466.005.

(52) "Hazardous Waste Disposal Site" means a geographical site in which or upon which hazardous waste is disposed.

(53) "Hazardous Waste Storage Site" means the geographical site upon which hazardous waste is stored.

(54) "Hazardous Waste Treatment Site" means the geographical site upon which or a facility in which hazardous waste is treated.

(55) "Health Hazard" means a condition where there are sufficient concentrations of biological, chemical, or physical, including radiological, contaminants in the water that are likely to cause human illness, disorders, or disability. These include but are not limited to, naturally occurring substances, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes. Sufficient concentrations of a contaminant include but are not limited to contaminant levels set by the Oregon Department of Environmental Quality and Oregon Health Division.

(56) "Health Threat" means a condition where there is an impending health hazard. The threat may be posed by, but not limited to: a conduit for contamination, or a well affecting migration of a contaminant plume, or the use of contaminated water. A well in which the construction is not verified by a water supply well report or geophysical techniques may be considered a conduit for contamination in certain circumstances. Those circumstances include, but are not limited to: an unused and neglected well or a well for which no surface seal was required. A well in which the casing seal, sanitary seal, or watertight cap has failed, or was inadequately installed may be considered a conduit for contamination.

(57) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(58) "Hydrofracturing" means the use of high pressure liquid, sand, packers or other material to open or widen fractures in consolidated formations for the purpose of increasing well yield.

(59) "Hydrologic Cycle" is the general pattern of water movement by evaporation from sea to atmosphere, by precipitation onto land, and by return to sea under influence of gravity.

(60) "Impermeable Sealing Material" means cement, concrete, or bentonite which is used to fill the open annulus between the lower and upper sealing intervals.

(61) "Inspection Port" means an orifice or other viewing device from which the low-pressure drain and check valve may be observed.

(62) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(63) "Leakage" means movement of surface and/ or subsurface water around the well casing or seal.

(64) "Liner Pipe" means the inner tubing, pipe, or conduit installed inside the well casing or lower well bore. The liner pipe is used to protect against caving formations and is not permanently affixed to the drillhole wall or casing.

(65) "Lower Drillhole" means that part of the well bore extending below the surface seal interval in a well.

(66) "Mineralized Water" means any naturally occurring ground water containing an amount of dissolved chemical constituents limiting the beneficial uses to which the water may be applied.

(67) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(68) "Monitoring Well Constructor" means any person who has a current water well constructor's license with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(69) "Monitoring Well Constructor's License" means a Water Well Constructor's License with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(70) "Municipal or Quasi-Municipal Well" means a water supply well owned by a municipality or nonprofit corporation that may be used as a community or public water supply.

(71) "Order" means any action satisfying the definition given in ORS Chapter 183 or any other action so designated in ORS 537.505 to 537.795.

(72) "Other Hole" means a hole other than a water supply well, a monitoring well, or geotechnical hole, however constructed, in naturally occurring or artificially emplaced earth materials, through which ground water can become contaminated. Holes constructed under ORS Chapters 517, 520, and 522 are not subject to these rules. Other holes are regulated under OAR 690-240. Examples of other holes are listed in 690-240-0030.

(73) "Perched Ground Water" means ground water held above the regional or main water table by a less permeable underlying earth or rock material (see Figure 200-2).

(74) "Permeability" means the ability of material to transmit fluid, usually described in units of gallons per day per square foot of cross-section area. It is related to the effectiveness with which pore spaces transmit fluids.

(75) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(76) "Petcock Valve" is a valve used to contain pressure which when opened will drain the line or pipe.

(77) "Piezometer" means a type of monitoring well designed solely to obtain ground water levels. Piezometers are prohibited in areas of known or reasonably suspected contamination. This term is synonymous with "observation well" (See OAR 690-240).

(78) "Pitless Adaptor" means a commercially manufactured unit or device designed for attachment to one or more openings through a well casing, which will permit water service pipes to pass through the wall of a well casing or extension thereof and prevent entrance of contaminants into the well or ground water.

(79) "Pitless Unit" means a commercially manufactured unit extending the upper terminal of the well casing to above land surface, constructed and installed so as to prevent the entrance of contaminants into the well and to protect the ground water supply, conduct water from the well, and provide full access to the well and water system parts therein.

(80) "Porosity" means the ratio of the volume of voids in the geologic formation being drilled to the overall volume of the material without regard to size, shape, interconnection, or arrangement of openings.

(81) "Potable Water" means water which is sufficiently free from biological, chemical, physical, or radiological impurities so that users thereof will not be exposed to or threatened with exposure to disease or harmful physiological effects.

(82) "Potentiometric Surface" means the level to which water will rise in tightly cased artesian wells (see Figure 200-2).

(83) "Pressure Grouting" means a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

(84) "Professional" means any person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering.

(85) "Public-at-Large" means a person not actively engaged in the well industry.

(86) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such a system has more than three service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by ten or more individuals per day or is a facility licensed by the Oregon Health Division.

(87) "Public Well" means a water supply well, whether publicly or privately owned, other than a municipal well, where water is provided for or is available through the single user for public consumption. This includes, but is not limited to, a school, a farm labor camp, an industrial establishment, a recreational facility, a restaurant, a motel, or a group care home.

(88) "Pumping Level" means the level of the water surface in a well while it is being pumped or bailed.

(89) "Pump Test" means the procedure involving pumping water for a specified period of time to determine the yield characteristics of an aquifer.

(90) "Refusal to Renew" means a provision in an order, or as allowed by ORS 537.747, that prohibits renewal of a well constructor's license, for a specified term not to exceed one year from the expiration date of the current license.

ADMINISTRATIVE RULES

(91) "Remediation Well" means a well used for extracting contaminants and/or contaminated ground water from an aquifer. This term is synonymous with "extraction well" and "recovery well."

(92) "Respondent" means the person against whom an enforcement action is taken.

(93) "Responsible Party" means the person or agency that is in charge of construction or maintenance and is either in violation as specified in a notice of violation or who may benefit from that violation.

(94) "Rough Drilling Log" means a record kept on the well site of the information needed to complete the well report for the well being constructed.

(95) "Revoke" means termination of a well constructor's license.

(96) "Sand" means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(97) "Sanitary Seal" means a tight fitting properly sized threaded, welded, or gasketed cap placed on the top of the permanent well casing to prevent entry of water and foreign material.

(98) "Sealant": See Grout

(99) "Silt" means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.005 mm in diameter.

(100) "Slope Stability Geotechnical Hole" means a geotechnical hole excavated, drilled or bored for studying and/or monitoring movement of landslide features, including water levels, or other mass-wasting features to detect zones of movement and establish whether movement is constant, accelerating, or responding to remedial measures. Hole(s) excavated, drilled or bored for the purpose of slope remediation or stabilization shall be considered a slope stability geotechnical hole. Slope stability geotechnical holes are not monitoring wells, piezometers, or water supply wells.

(101) "Sponsor" means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(102) "Static Water Level" means the stabilized level or elevation of water surface in a well not being pumped.

(103) "Stratum" means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(104) "Sump" means a hole dug to a depth of ten feet or less with a diameter greater than ten feet in which ground water is sought or encountered.

(105) "Suspension" means the temporary removal of the privilege to construct wells under an existing license for a period of time not to exceed one year.

(106) "System Interlock" means an interlocking mechanism used to link irrigation pumps and chemical injection units, other pumps, or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the chemical injection units will occur. (Back-siphon prevention)

(107) "Unconsolidated Formation" means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(108) "Underground Injection" means the emplacement or discharge of fluids to the subsurface.

(109) "Underground Injection System" means a well, improved sump, sewage drain hole, subsurface fluid distribution system, or other system or ground water point source used for the emplacement or discharge of fluids.

(110) "Upper Oversize Drillhole" means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(111) "Violation" means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(112) "Water Supply Well" means a well, other than a monitoring well, that is used to beneficially withdraw or beneficially inject ground or surface water. Water supply wells include, but are not limited to, community, dewatering, domestic, irrigation, industrial, municipal, and aquifer storage and recovery wells.

(113) "Water Supply Well Constructor" means any person who has a current water well constructor's license with a water supply well endorsement issued in accordance with ORS 537.747(3).

(114) "Water Supply Well Constructor's License" means a Water Well Constructor's License with a water supply well endorsement issued in accordance with ORS 537.747(3).

(115) "Water Supply Well Drilling Machine" means any power-driven driving, jetting, percussion, rotary, boring, digging, augering machine, or other equipment used in the construction or alteration of water supply wells.

(116) "Water Table" means the upper surface of an unconfined water body, the surface of which is at atmospheric pressure and fluctuates seasonally. The water table is defined by the levels at which water stands in wells that penetrate the water body (see Figure 200-2).

(117) "Water Well Constructor's License" means a license to construct, alter, deepen, abandon or convert wells issued in accordance with

ORS 537.747(3). Endorsements are issued to the license and are specific to the type of well a constructor is qualified to construct, alter, deepen, abandon or convert.

(118) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in ORS 522.055 is regulated by the Department of Geology and Mineral Industries.

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

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9, f. & ef. 12-9-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 12-1982, f. & ef. 12-14-82; Renumbered from 690-060-0050 & 690-064-0000 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 21-1990, f. & cert. ef. 12-14-90; WRD 1-1991, f. & cert. ef. 2-8-91; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

690-210-0280

Access Ports and Airlines

All water supply wells shall be equipped with a usable access port with a minimum diameter of 1/2 inch for the purpose of determining the water level in the well at any time. Dedicated measuring tubes are recommended to be installed on all wells at the time of pump installation. Where required, dedicated measuring tubes shall be a minimum of 3/4-inch schedule 40 PVC extending to the top of the pump (See Dedicated Measuring Tube Diagram and Specifications in Figure 200-5). An airline is not a substitute for a required dedicated measuring tube and, if installed, must enter the well in a location other than the access port. Access ports, dedicated measuring tubes or airlines shall be capped and be a minimum of twelve inches above finished ground surface or pumphouse floor (See Figure 210-12) (See Figure 200-5). The access port, airline and dedicated measuring tube on all water supply wells required by OAR 690-210-0280 shall be maintained in a condition that will prevent contamination of the ground water, and shall remain unobstructed and be maintained by the landowner so that the water level can be determined at any time.

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

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

690-215-0060

Access Ports, Dedicated Measuring Tubes or Airlines

All water supply wells shall be equipped with an unobstructed access port with a minimum diameter of 1/2 inch for the purpose of determining the water level in the well at any time. Dedicated measuring tubes are recommended to be installed on all wells at the time of pump installation. Where required, dedicated measuring tubes shall be a minimum of 3/4-inch diameter schedule 40 PVC and shall extend to the top of the pump. The dedicated measuring tube shall be vented above and below the well cap and shall be attached to the pump column at 10 foot intervals with 10 mil plastic tape. The lower five feet of the dedicated measuring tube shall be either 0.020 inch machine slotted well screen or the lower 20 feet of the dedicated measuring tube shall be extensively perforated with 1/8 inch holes. The dedicated measuring tube shall be plugged or capped at the bottom (Figure 200-5). The dedicated measuring tube shall not be reduced in size over the length of the pipe and shall remain free from wire or other obstruction. An airline is not a substitute for a required dedicated measuring tube and, if installed, must enter the well in a location other than the access port. Access ports, dedicated measuring tubes or airlines shall be capped and a minimum of twelve inches above finished ground surface or pumphouse floor. If the well has a pitless adaptor then the dedicated measuring tube shall terminate within six inches of the top of the well casing. The access port, airline and dedicated measuring tube on all water supply wells required by OAR 690-210-0280 shall be maintained in a condition that will prevent contamination of the ground water, and shall remain unobstructed and be maintained by the landowner so that the water level can be determined at any time.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86; Renumbered from 690-062-0015; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

690-215-0080

Flowmeters and Dedicated Measuring Tubes

The Director may require the landowner to install totalizing flowmeters or dedicated measuring tubes on any water supply well, either as a condition of a water right permit or at a later date as circumstances may warrant. The landowner may be required to install totalizing flowmeters or ded-

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icated measuring tubes on existing permitted wells and on wells which are exempted by ORS 537.545.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

690-215-0200

Dedicated Measuring Tube

A dedicated measuring tube as described in 690-215-0060 shall be installed in any water supply well at the time of pump installation, pump repair or pump replacement in the following areas (See **Figures 200-4, 200-5** and **200-7**):

(1) Petes Mountain Area of Clackamas County (See OAR 690-200-0028(2));

(2) Eola Hills Ground Water Limited Area of Polk and Yamhill Counties (See OAR 690-200-0028(3)).

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

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

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101-010-0005	2-4-2008	Amend(T)	3-1-2008	115-025-0015	1-1-2008	Amend	2-1-2008
101-015-0025	2-4-2008	Amend(T)	3-1-2008	115-025-0020	1-1-2008	Amend	2-1-2008
105-040-0015	3-1-2008	Adopt	4-1-2008	115-025-0023	1-1-2008	Amend	2-1-2008
105-040-0015(T)	3-1-2008	Repeal	4-1-2008	115-025-0025	1-1-2008	Amend	2-1-2008
110-010-0030	4-15-2008	Amend(T)	5-1-2008	115-025-0025	3-17-2008	Amend	4-1-2008
110-010-0030	6-17-2008	Amend	8-1-2008	115-025-0030	1-1-2008	Amend	2-1-2008
110-010-0034	4-15-2008	Adopt(T)	5-1-2008	115-025-0030	3-17-2008	Amend	4-1-2008
110-010-0034	6-17-2008	Adopt	8-1-2008	115-025-0035	1-1-2008	Amend	2-1-2008
110-010-0035	4-15-2008	Suspend	5-1-2008	115-025-0065	1-1-2008	Adopt	2-1-2008
110-010-0035	6-17-2008	Repeal	8-1-2008	115-025-0065	3-17-2008	Amend	4-1-2008
110-010-0039	4-15-2008	Adopt(T)	5-1-2008	115-025-0070	1-1-2008	Adopt	2-1-2008
110-010-0039	6-17-2008	Adopt	8-1-2008	115-025-0075	1-1-2008	Adopt	2-1-2008
110-010-0040	4-15-2008	Suspend	5-1-2008	115-035-0035	12-26-2007	Amend	2-1-2008
110-010-0040	6-17-2008	Repeal	8-1-2008	115-040-0005	12-26-2007	Amend	2-1-2008
110-010-0045	4-15-2008	Suspend	5-1-2008	115-040-0030	1-1-2008	Amend	2-1-2008
110-010-0045	6-17-2008	Repeal	8-1-2008	115-070-0000	12-26-2007	Amend	2-1-2008
110-010-0050	4-15-2008	Suspend	5-1-2008	115-070-0035	12-26-2007	Amend	2-1-2008
110-010-0050	6-17-2008	Repeal	8-1-2008	123-001-0050	1-2-2008	Amend	2-1-2008
110-010-0055	4-15-2008	Suspend	5-1-2008	123-001-0050	3-28-2008	Amend(T)	5-1-2008
110-010-0055	6-17-2008	Repeal	8-1-2008	123-001-0050	6-4-2008	Amend	7-1-2008
110-010-0060	4-15-2008	Suspend	5-1-2008	123-001-0300	1-2-2008	Amend	2-1-2008
110-010-0060	6-17-2008	Repeal	8-1-2008	123-001-0300	3-28-2008	Amend(T)	5-1-2008
110-040-0012	4-15-2008	Amend(T)	5-1-2008	123-001-0300	6-4-2008	Amend	7-1-2008
110-040-0012	6-17-2008	Amend	8-1-2008	123-001-0500	1-2-2008	Amend	2-1-2008
110-040-0014	4-15-2008	Amend(T)	5-1-2008	123-001-0500	3-28-2008	Amend(T)	5-1-2008
110-040-0014	6-17-2008	Amend	8-1-2008	123-001-0500	6-4-2008	Amend	7-1-2008
110-040-0015	4-15-2008	Suspend	5-1-2008	123-001-0520	1-2-2008	Amend	2-1-2008
110-040-0015	6-17-2008	Repeal	8-1-2008	123-001-0520	3-28-2008	Amend(T)	5-1-2008
110-040-0020	4-15-2008	Suspend	5-1-2008	123-001-0520	6-4-2008	Amend	7-1-2008
110-040-0020	6-17-2008	Repeal	8-1-2008	123-001-0700	1-2-2008	Amend	2-1-2008
111-001-0000	1-4-2008	Adopt	2-1-2008	123-001-0700	3-28-2008	Amend(T)	5-1-2008
111-001-0005	1-4-2008	Adopt	2-1-2008	123-001-0700	6-4-2008	Amend	7-1-2008
111-002-0005	1-4-2008	Adopt	2-1-2008	123-001-0725	1-2-2008	Amend	2-1-2008
111-002-0010	1-4-2008	Adopt	2-1-2008	123-001-0725	3-28-2008	Amend(T)	5-1-2008
111-005-0010	1-4-2008	Adopt	2-1-2008	123-001-0725	6-4-2008	Amend	7-1-2008
111-005-0015	1-4-2008	Adopt	2-1-2008	123-001-0750	1-2-2008	Amend	2-1-2008
111-005-0020	1-4-2008	Adopt	2-1-2008	123-001-0750	3-28-2008	Amend(T)	5-1-2008
111-005-0040	1-4-2008	Adopt	2-1-2008	123-001-0750	6-4-2008	Amend	7-1-2008
111-005-0042	1-4-2008	Adopt	2-1-2008	123-009-0060	1-2-2008	Amend	2-1-2008
111-005-0044	1-4-2008	Adopt	2-1-2008	123-009-0060	3-28-2008	Amend(T)	5-1-2008
111-005-0046	1-4-2008	Adopt	2-1-2008	123-009-0060	6-4-2008	Amend	7-1-2008
111-005-0048	1-4-2008	Adopt	2-1-2008	123-009-0080	1-2-2008	Amend	2-1-2008
111-005-0050	1-4-2008	Adopt	2-1-2008	123-009-0080	3-28-2008	Amend(T)	5-1-2008
111-005-0060	1-4-2008	Adopt	2-1-2008	123-009-0080	6-4-2008	Amend	7-1-2008
111-005-0070	1-4-2008	Adopt	2-1-2008	123-009-0090	1-2-2008	Amend	2-1-2008
111-010-0015	1-4-2008	Adopt	2-1-2008	123-009-0090	3-28-2008	Amend(T)	5-1-2008
111-015-0001	2-19-2008	Adopt	4-1-2008	123-009-0090	6-4-2008	Amend	7-1-2008
111-020-0001	4-1-2008	Adopt	5-1-2008	123-011-0030	3-4-2008	Amend(T)	4-1-2008
111-020-0005	1-4-2008	Adopt	2-1-2008	123-011-0035	3-4-2008	Amend(T)	4-1-2008
111-030-0001	6-26-2008	Adopt	8-1-2008	123-011-0037	3-4-2008	Adopt(T)	4-1-2008
111-030-0005	6-26-2008	Adopt	8-1-2008	123-011-0040	3-4-2008	Amend(T)	4-1-2008
111-040-0050	6-26-2008	Adopt	8-1-2008	123-011-0045	3-4-2008	Amend(T)	4-1-2008
111-050-0001	4-15-2008	Adopt	5-1-2008	123-016-0000	6-10-2008	Amend(T)	7-1-2008
111-050-0010	4-15-2008	Adopt	5-1-2008	123-016-0010	6-10-2008	Amend(T)	7-1-2008
111-050-0015	4-15-2008	Adopt	5-1-2008	123-016-0020	6-10-2008	Amend(T)	7-1-2008
111-060-0001	4-1-2008	Adopt(T)	5-1-2008	123-016-0030	6-10-2008	Amend(T)	7-1-2008
115-010-0032	12-26-2007	Amend	2-1-2008	123-016-0040	6-10-2008	Amend(T)	7-1-2008
115-010-0115	12-26-2007	Amend	2-1-2008	123-016-0050	6-10-2008	Amend(T)	7-1-2008
115-025-0000	1-1-2008	Amend	2-1-2008	123-016-0060	6-10-2008	Amend(T)	7-1-2008
115-025-0010	1-1-2008	Amend	2-1-2008	123-016-0070	6-10-2008	Amend(T)	7-1-2008

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123-016-0076	6-10-2008	Adopt(T)	7-1-2008	123-055-0400	3-4-2008	Amend(T)	4-1-2008
123-016-0080	6-10-2008	Amend(T)	7-1-2008	123-055-0420	3-4-2008	Amend(T)	4-1-2008
123-016-0090	6-10-2008	Amend(T)	7-1-2008	123-055-0440	3-4-2008	Amend(T)	4-1-2008
123-016-0100	6-10-2008	Amend(T)	7-1-2008	123-055-0460	3-4-2008	Amend(T)	4-1-2008
123-017-0008	2-26-2008	Amend(T)	4-1-2008	123-055-0525	3-4-2008	Amend(T)	4-1-2008
123-017-0010	2-26-2008	Amend(T)	4-1-2008	123-055-0620	3-4-2008	Amend(T)	4-1-2008
123-017-0015	2-26-2008	Amend(T)	4-1-2008	123-055-0900	3-4-2008	Amend(T)	4-1-2008
123-017-0020	2-26-2008	Amend(T)	4-1-2008	123-057-0110	3-4-2008	Amend(T)	4-1-2008
123-017-0025	2-26-2008	Amend(T)	4-1-2008	123-057-0130	3-4-2008	Amend(T)	4-1-2008
123-017-0030	2-26-2008	Amend(T)	4-1-2008	123-057-0150	3-4-2008	Amend(T)	4-1-2008
123-017-0035	2-26-2008	Amend(T)	4-1-2008	123-057-0190	3-4-2008	Amend(T)	4-1-2008
123-017-0055	2-26-2008	Amend(T)	4-1-2008	123-057-0210	3-4-2008	Amend(T)	4-1-2008
123-018-0010	3-4-2008	Amend(T)	4-1-2008	123-057-0230	3-4-2008	Amend(T)	4-1-2008
123-018-0040	3-4-2008	Amend(T)	4-1-2008	123-057-0310	3-4-2008	Suspend	4-1-2008
123-018-0060	3-4-2008	Amend(T)	4-1-2008	123-057-0330	3-4-2008	Amend(T)	4-1-2008
123-018-0085	3-4-2008	Amend(T)	4-1-2008	123-057-0350	3-4-2008	Amend(T)	4-1-2008
123-018-0100	3-4-2008	Amend(T)	4-1-2008	123-057-0410	3-4-2008	Amend(T)	4-1-2008
123-018-0160	3-4-2008	Amend(T)	4-1-2008	123-057-0430	3-4-2008	Amend(T)	4-1-2008
123-019-0020	2-26-2008	Amend(T)	4-1-2008	123-057-0450	3-4-2008	Amend(T)	4-1-2008
123-019-0040	2-26-2008	Amend(T)	4-1-2008	123-057-0470	3-4-2008	Amend(T)	4-1-2008
123-021-0010	2-26-2008	Amend(T)	4-1-2008	123-057-0510	3-4-2008	Amend(T)	4-1-2008
123-021-0030	2-26-2008	Suspend	4-1-2008	123-057-0530	3-4-2008	Amend(T)	4-1-2008
123-021-0050	2-26-2008	Amend(T)	4-1-2008	123-057-0710	3-4-2008	Amend(T)	4-1-2008
123-021-0090	2-26-2008	Amend(T)	4-1-2008	123-135-0020	6-4-2008	Amend	7-1-2008
123-024-0001	3-20-2008	Amend(T)	5-1-2008	123-135-0070	6-4-2008	Amend	7-1-2008
123-024-0011	3-20-2008	Amend(T)	5-1-2008	125-050-0200	2-29-2008	Adopt	4-1-2008
123-024-0031	3-20-2008	Amend(T)	5-1-2008	125-125-0050	4-15-2008	Amend(T)	5-1-2008
123-024-0041	3-20-2008	Suspend	5-1-2008	125-125-0050	6-17-2008	Amend	8-1-2008
123-025-0010	12-7-2007	Amend(T)	1-1-2008	125-125-0100	4-15-2008	Amend(T)	5-1-2008
123-025-0010	6-4-2008	Amend	7-1-2008	125-125-0100	6-17-2008	Amend	8-1-2008
123-025-0012	12-7-2007	Amend(T)	1-1-2008	125-125-0150	4-15-2008	Amend(T)	5-1-2008
123-025-0012	6-4-2008	Amend	7-1-2008	125-125-0150	6-17-2008	Amend	8-1-2008
123-025-0014	12-7-2007	Adopt(T)	1-1-2008	125-125-0250	4-15-2008	Amend(T)	5-1-2008
123-025-0015	12-7-2007	Suspend	1-1-2008	125-125-0250	6-17-2008	Amend	8-1-2008
123-025-0015	6-4-2008	Amend	7-1-2008	125-125-0300	4-15-2008	Amend(T)	5-1-2008
123-025-0017	12-7-2007	Amend(T)	1-1-2008	125-125-0300	6-17-2008	Amend	8-1-2008
123-025-0017	6-4-2008	Amend	7-1-2008	125-125-0350	4-15-2008	Amend(T)	5-1-2008
123-025-0021	12-7-2007	Amend(T)	1-1-2008	125-125-0350	6-17-2008	Amend	8-1-2008
123-025-0021	6-4-2008	Amend	7-1-2008	125-125-0400	4-15-2008	Amend(T)	5-1-2008
123-025-0023	12-7-2007	Amend(T)	1-1-2008	125-125-0400	6-17-2008	Amend	8-1-2008
123-025-0023	6-4-2008	Amend	7-1-2008	125-125-0500	4-15-2008	Adopt(T)	5-1-2008
123-025-0025	12-7-2007	Amend(T)	1-1-2008	125-125-0500	6-17-2008	Adopt	8-1-2008
123-025-0025	6-4-2008	Amend	7-1-2008	125-125-0600	4-15-2008	Adopt(T)	5-1-2008
123-025-0030	12-7-2007	Amend(T)	1-1-2008	125-125-0600	6-17-2008	Adopt	8-1-2008
123-025-0030	6-4-2008	Amend	7-1-2008	125-145-0010	12-6-2007	Suspend	1-1-2008
123-042-0020	4-9-2008	Amend(T)	5-1-2008	125-145-0010	2-6-2008	Repeal	3-1-2008
123-042-0026	4-9-2008	Amend(T)	5-1-2008	125-145-0020	12-6-2007	Suspend	1-1-2008
123-042-0036	4-9-2008	Amend(T)	5-1-2008	125-145-0020	2-6-2008	Repeal	3-1-2008
123-043-0010	4-9-2008	Amend(T)	5-1-2008	125-145-0030	12-6-2007	Suspend	1-1-2008
123-043-0035	4-9-2008	Amend(T)	5-1-2008	125-145-0030	2-6-2008	Repeal	3-1-2008
123-043-0045	4-9-2008	Amend(T)	5-1-2008	125-145-0040	12-6-2007	Suspend	1-1-2008
123-043-0055	4-9-2008	Amend(T)	5-1-2008	125-145-0040	2-6-2008	Repeal	3-1-2008
123-043-0075	4-9-2008	Amend(T)	5-1-2008	125-145-0045	12-6-2007	Suspend	1-1-2008
123-055-0100	3-4-2008	Amend(T)	4-1-2008	125-145-0045	2-6-2008	Repeal	3-1-2008
123-055-0120	3-4-2008	Amend(T)	4-1-2008	125-145-0060	12-6-2007	Suspend	1-1-2008
123-055-0200	3-4-2008	Amend(T)	4-1-2008	125-145-0060	2-6-2008	Repeal	3-1-2008
123-055-0220	3-4-2008	Amend(T)	4-1-2008	125-145-0080	12-6-2007	Suspend	1-1-2008
123-055-0240	3-4-2008	Amend(T)	4-1-2008	125-145-0080	2-6-2008	Repeal	3-1-2008
123-055-0300	3-4-2008	Amend(T)	4-1-2008	125-145-0090	12-6-2007	Suspend	1-1-2008

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125-145-0100	12-6-2007	Suspend	1-1-2008	125-247-0400	7-2-2008	Amend	8-1-2008
125-145-0100	2-6-2008	Repeal	3-1-2008	125-247-0410	7-2-2008	Amend	8-1-2008
125-145-0105	12-6-2007	Suspend	1-1-2008	125-247-0430	7-2-2008	Amend	8-1-2008
125-145-0105	2-6-2008	Repeal	3-1-2008	125-247-0525	7-2-2008	Amend	8-1-2008
125-246-0100	7-2-2008	Amend	8-1-2008	125-247-0550	7-2-2008	Amend	8-1-2008
125-246-0110	7-2-2008	Amend	8-1-2008	125-247-0575	7-2-2008	Amend	8-1-2008
125-246-0130	7-2-2008	Amend	8-1-2008	125-247-0600	7-2-2008	Amend	8-1-2008
125-246-0140	7-2-2008	Amend	8-1-2008	125-247-0610	7-2-2008	Amend	8-1-2008
125-246-0170	7-2-2008	Amend	8-1-2008	125-247-0691	7-2-2008	Amend	8-1-2008
125-246-0200	7-2-2008	Amend	8-1-2008	125-247-0700	7-2-2008	Amend	8-1-2008
125-246-0310	7-2-2008	Amend	8-1-2008	125-247-0710	7-2-2008	Amend	8-1-2008
125-246-0330	7-2-2008	Amend	8-1-2008	125-247-0730	7-2-2008	Amend	8-1-2008
125-246-0333	7-2-2008	Adopt	8-1-2008	125-247-0731	7-2-2008	Amend	8-1-2008
125-246-0335	7-2-2008	Amend	8-1-2008	125-247-0750	7-2-2008	Amend	8-1-2008
125-246-0345	7-2-2008	Amend	8-1-2008	125-248-0100	7-2-2008	Amend	8-1-2008
125-246-0350	7-2-2008	Amend	8-1-2008	125-248-0130	7-2-2008	Amend	8-1-2008
125-246-0353	7-2-2008	Amend	8-1-2008	125-248-0200	7-2-2008	Amend	8-1-2008
125-246-0355	7-2-2008	Repeal	8-1-2008	125-248-0210	7-2-2008	Amend	8-1-2008
125-246-0365	7-2-2008	Adopt	8-1-2008	125-248-0220	7-2-2008	Amend	8-1-2008
125-246-0400	7-2-2008	Amend	8-1-2008	125-248-0240	7-2-2008	Amend	8-1-2008
125-246-0410	7-2-2008	Amend	8-1-2008	125-248-0250	7-2-2008	Amend	8-1-2008
125-246-0420	7-2-2008	Amend	8-1-2008	125-248-0300	7-2-2008	Amend	8-1-2008
125-246-0430	7-2-2008	Amend	8-1-2008	125-248-0340	7-2-2008	Amend	8-1-2008
125-246-0440	7-2-2008	Amend	8-1-2008	125-249-0100	7-2-2008	Amend	8-1-2008
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125-246-0460	7-2-2008	Amend	8-1-2008	125-249-0150	7-2-2008	Amend	8-1-2008
125-246-0555	7-2-2008	Amend	8-1-2008	125-249-0160	7-2-2008	Amend	8-1-2008
125-246-0556	7-2-2008	Adopt	8-1-2008	125-249-0200	7-2-2008	Amend	8-1-2008
125-246-0560	7-2-2008	Amend	8-1-2008	125-249-0210	7-2-2008	Amend	8-1-2008
125-246-0570	7-2-2008	Amend	8-1-2008	125-249-0220	7-2-2008	Amend	8-1-2008
125-246-0575	7-2-2008	Amend	8-1-2008	125-249-0270	7-2-2008	Amend	8-1-2008
125-246-0700	2-29-2008	Am. & Ren.	4-1-2008	125-249-0280	7-2-2008	Amend	8-1-2008
125-246-0710	2-29-2008	Am. & Ren.	4-1-2008	125-249-0290	7-2-2008	Amend	8-1-2008
125-246-0720	2-29-2008	Am. & Ren.	4-1-2008	125-249-0310	7-2-2008	Amend	8-1-2008
125-246-0730	2-29-2008	Am. & Ren.	4-1-2008	125-249-0390	7-2-2008	Amend	8-1-2008
125-246-0800	7-2-2008	Amend	8-1-2008	125-249-0395	7-2-2008	Amend	8-1-2008
125-247-0010	7-2-2008	Amend	8-1-2008	125-249-0430	7-2-2008	Amend	8-1-2008
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125-247-0170	7-2-2008	Amend	8-1-2008	125-249-0470	7-2-2008	Amend	8-1-2008
125-247-0200	7-2-2008	Amend	8-1-2008	125-249-0630	7-2-2008	Amend	8-1-2008
125-247-0255	7-2-2008	Amend	8-1-2008	125-249-0645	7-2-2008	Amend	8-1-2008
125-247-0256	7-2-2008	Amend	8-1-2008	125-249-0800	7-2-2008	Amend	8-1-2008
125-247-0260	7-2-2008	Amend	8-1-2008	125-249-0860	7-2-2008	Amend	8-1-2008
125-247-0261	7-2-2008	Amend	8-1-2008	125-600-7550	6-30-2008	Adopt	8-1-2008
125-247-0265	7-2-2008	Amend	8-1-2008	137-008-0000	5-1-2008	Amend	6-1-2008
125-247-0270	7-2-2008	Amend	8-1-2008	137-008-0005	5-1-2008	Amend	6-1-2008
125-247-0275	7-2-2008	Amend	8-1-2008	137-008-0010	5-1-2008	Amend	6-1-2008
125-247-0280	7-2-2008	Amend	8-1-2008	137-008-0020	5-1-2008	Amend	6-1-2008
125-247-0286	7-2-2008	Amend	8-1-2008	137-009-0130	2-1-2008	Amend	3-1-2008
125-247-0287	7-2-2008	Amend	8-1-2008	137-009-0140	2-1-2008	Amend	3-1-2008
125-247-0288	7-2-2008	Amend	8-1-2008	137-009-0145	2-1-2008	Amend	3-1-2008
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125-247-0294	7-2-2008	Repeal	8-1-2008	137-009-0150	2-1-2008	Amend	3-1-2008
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125-247-0310	7-2-2008	Amend	8-1-2008	137-020-0020	1-2-2008	Amend	2-1-2008
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137-045-0015	1-1-2008	Amend	2-1-2008	137-055-3100	1-2-2008	Amend(T)	2-1-2008
137-045-0020	1-1-2008	Amend	2-1-2008	137-055-3100	4-1-2008	Amend	5-1-2008
137-045-0030	1-1-2008	Amend	2-1-2008	137-055-3140	1-2-2008	Amend(T)	2-1-2008
137-045-0035	1-1-2008	Amend	2-1-2008	137-055-3140	4-1-2008	Amend	5-1-2008
137-045-0050	1-1-2008	Amend	2-1-2008	137-055-3420	7-15-2008	Amend(T)	8-1-2008
137-045-0055	1-1-2008	Amend	2-1-2008	137-055-4560	4-1-2008	Amend	5-1-2008
137-045-0060	1-1-2008	Amend	2-1-2008	137-055-4620	1-2-2008	Amend	2-1-2008
137-045-0070	1-1-2008	Amend	2-1-2008	137-055-5110	7-1-2008	Amend	8-1-2008
137-045-0090	1-1-2008	Amend	2-1-2008	137-060-0100	1-18-2008	Amend	3-1-2008
137-046-0100	1-1-2008	Amend	2-1-2008	137-060-0110	1-18-2008	Amend	3-1-2008
137-046-0110	1-1-2008	Amend	2-1-2008	137-060-0130	1-18-2008	Amend	3-1-2008
137-046-0130	1-1-2008	Amend	2-1-2008	137-060-0140	1-18-2008	Amend	3-1-2008
137-047-0000	1-1-2008	Amend	2-1-2008	137-060-0150	1-18-2008	Amend	3-1-2008
137-047-0100	1-1-2008	Amend	2-1-2008	137-060-0150	7-24-2008	Amend	6-1-2008
137-047-0257	1-1-2008	Amend	2-1-2008	137-060-0160	1-18-2008	Amend	3-1-2008
137-047-0262	1-1-2008	Amend	2-1-2008	137-060-0160	7-24-2008	Amend	6-1-2008
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137-047-0275	1-1-2008	Amend	2-1-2008	137-060-0210	1-18-2008	Amend	3-1-2008
137-047-0280	1-1-2008	Amend	2-1-2008	137-060-0230	1-18-2008	Amend	3-1-2008
137-047-0285	1-1-2008	Amend	2-1-2008	137-060-0240	1-18-2008	Amend	3-1-2008
137-047-0310	1-1-2008	Amend	2-1-2008	137-060-0250	1-18-2008	Amend	3-1-2008
137-047-0330	1-1-2008	Amend	2-1-2008	137-060-0260	1-18-2008	Amend	3-1-2008
137-047-0400	1-1-2008	Amend	2-1-2008	137-060-0300	1-18-2008	Amend	3-1-2008
137-047-0410	1-1-2008	Amend	2-1-2008	137-060-0310	1-18-2008	Amend	3-1-2008
137-047-0430	1-1-2008	Amend	2-1-2008	137-060-0330	1-18-2008	Amend	3-1-2008
137-047-0575	1-1-2008	Amend	2-1-2008	137-060-0340	1-18-2008	Amend	3-1-2008
137-047-0610	1-1-2008	Amend	2-1-2008	137-060-0350	1-18-2008	Amend	3-1-2008
137-047-0730	1-1-2008	Amend	2-1-2008	137-060-0350	7-24-2008	Amend	6-1-2008
137-048-0100	1-1-2008	Amend	2-1-2008	137-060-0360	1-18-2008	Amend	3-1-2008
137-048-0130	1-1-2008	Amend	2-1-2008	137-060-0360	7-24-2008	Amend	6-1-2008
137-048-0200	1-1-2008	Amend	2-1-2008	137-060-0400	1-18-2008	Amend	3-1-2008
137-048-0210	1-1-2008	Amend	2-1-2008	137-060-0410	1-18-2008	Amend	3-1-2008
137-048-0220	1-1-2008	Amend	2-1-2008	137-060-0430	1-18-2008	Amend	3-1-2008
137-048-0240	1-1-2008	Amend	2-1-2008	137-060-0440	1-18-2008	Amend	3-1-2008
137-048-0250	1-1-2008	Amend	2-1-2008	137-060-0450	1-18-2008	Amend	3-1-2008
137-048-0300	1-1-2008	Amend	2-1-2008	137-079-0170	4-1-2008	Amend	5-1-2008
137-048-0320	1-1-2008	Amend	2-1-2008	137-079-0200	4-1-2008	Amend	5-1-2008
137-049-0100	1-1-2008	Amend	2-1-2008	137-084-0001	12-11-2007	Amend	1-1-2008
137-049-0140	1-1-2008	Amend	2-1-2008	137-084-0005	12-11-2007	Amend	1-1-2008
137-049-0150	1-1-2008	Amend	2-1-2008	137-084-0010	12-11-2007	Amend	1-1-2008
137-049-0160	1-1-2008	Amend	2-1-2008	137-084-0020	12-11-2007	Amend	1-1-2008
137-049-0200	1-1-2008	Amend	2-1-2008	137-084-0500	12-11-2007	Amend	1-1-2008
137-049-0210	1-1-2008	Amend	2-1-2008	141-085-0005	1-1-2008	Amend	1-1-2008
137-049-0280	1-1-2008	Amend	2-1-2008	141-085-0006	1-1-2008	Amend	1-1-2008
137-049-0290	1-1-2008	Amend	2-1-2008	141-085-0010	1-1-2008	Amend	1-1-2008
137-049-0310	1-1-2008	Amend	2-1-2008	141-085-0015	1-1-2008	Amend	1-1-2008
137-049-0390	1-1-2008	Amend	2-1-2008	141-085-0018	1-1-2008	Amend	1-1-2008
137-049-0395	1-1-2008	Amend	2-1-2008	141-085-0020	1-1-2008	Amend	1-1-2008
137-049-0630	1-1-2008	Amend	2-1-2008	141-085-0021	1-1-2008	Repeal	1-1-2008
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137-049-0860	1-1-2008	Amend	2-1-2008	141-085-0023	1-1-2008	Amend	1-1-2008
137-055-1060	7-1-2008	Amend	8-1-2008	141-085-0025	1-1-2008	Amend	1-1-2008
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137-055-2160	7-1-2008	Amend	8-1-2008	141-085-0029	1-1-2008	Amend	1-1-2008
137-055-3020	1-2-2008	Amend(T)	2-1-2008	141-085-0034	1-1-2008	Amend	1-1-2008
137-055-3020	4-1-2008	Amend	5-1-2008	141-085-0036	1-1-2008	Amend	1-1-2008
137-055-3060	1-2-2008	Amend(T)	2-1-2008	141-085-0064	1-1-2008	Amend	1-1-2008
137-055-3060	4-1-2008	Amend	5-1-2008	141-085-0066	1-1-2008	Amend	1-1-2008

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141-085-0075	1-1-2008	Amend	1-1-2008	141-089-0390	5-1-2008	Adopt	5-1-2008
141-085-0079	1-1-2008	Amend	1-1-2008	141-089-0400	1-1-2008	Amend	1-1-2008
141-085-0085	1-1-2008	Amend	1-1-2008	141-089-0405	1-1-2008	Amend	1-1-2008
141-085-0090	1-1-2008	Amend	1-1-2008	141-089-0415	1-1-2008	Amend	1-1-2008
141-085-0095	1-1-2008	Amend	1-1-2008	141-089-0420	1-1-2008	Amend	1-1-2008
141-085-0096	1-1-2008	Amend	1-1-2008	141-089-0423	1-1-2008	Adopt	1-1-2008
141-085-0115	1-1-2008	Amend	1-1-2008	141-089-0500	1-1-2008	Amend	1-1-2008
141-085-0121	1-1-2008	Amend	1-1-2008	141-089-0505	1-1-2008	Amend	1-1-2008
141-085-0126	1-1-2008	Amend	1-1-2008	141-089-0515	1-1-2008	Amend	1-1-2008
141-085-0131	1-1-2008	Amend	1-1-2008	141-089-0520	1-1-2008	Amend	1-1-2008
141-085-0136	1-1-2008	Amend	1-1-2008	141-089-0550	1-1-2008	Amend	1-1-2008
141-085-0141	1-1-2008	Amend	1-1-2008	141-089-0555	1-1-2008	Amend	1-1-2008
141-085-0146	1-1-2008	Amend	1-1-2008	141-089-0560	1-1-2008	Amend	1-1-2008
141-085-0156	1-1-2008	Amend	1-1-2008	141-089-0565	1-1-2008	Amend	1-1-2008
141-085-0161	1-1-2008	Amend	1-1-2008	141-089-0570	1-1-2008	Amend	1-1-2008
141-085-0166	1-1-2008	Amend	1-1-2008	141-089-0572	1-1-2008	Adopt	1-1-2008
141-085-0171	1-1-2008	Amend	1-1-2008	141-089-0585	1-1-2008	Amend	1-1-2008
141-085-0176	1-1-2008	Amend	1-1-2008	141-089-0595	1-1-2008	Amend	1-1-2008
141-085-0256	1-1-2008	Amend	1-1-2008	141-089-0600	1-1-2008	Amend	1-1-2008
141-085-0257	1-1-2008	Amend	1-1-2008	141-089-0605	1-1-2008	Amend	1-1-2008
141-085-0421	1-1-2008	Amend	1-1-2008	141-089-0607	1-1-2008	Adopt	1-1-2008
141-085-0425	1-1-2008	Amend	1-1-2008	141-090-0005	1-1-2008	Amend	1-1-2008
141-085-0430	1-1-2008	Amend	1-1-2008	141-090-0010	1-1-2008	Amend	1-1-2008
141-089-0100	1-1-2008	Amend	1-1-2008	141-090-0015	1-1-2008	Amend	1-1-2008
141-089-0105	1-1-2008	Amend	1-1-2008	141-090-0020	1-1-2008	Amend	1-1-2008
141-089-0110	1-1-2008	Amend	1-1-2008	141-090-0025	1-1-2008	Amend	1-1-2008
141-089-0115	1-1-2008	Amend	1-1-2008	141-090-0030	1-1-2008	Amend	1-1-2008
141-089-0120	1-1-2008	Amend	1-1-2008	141-090-0032	1-1-2008	Adopt	1-1-2008
141-089-0135	1-1-2008	Amend	1-1-2008	141-090-0035	1-1-2008	Amend	1-1-2008
141-089-0140	1-1-2008	Amend	1-1-2008	141-090-0040	1-1-2008	Amend	1-1-2008
141-089-0150	1-1-2008	Amend	1-1-2008	141-090-0045	1-1-2008	Amend	1-1-2008
141-089-0155	1-1-2008	Amend	1-1-2008	141-090-0050	1-1-2008	Amend	1-1-2008
141-089-0157	1-1-2008	Adopt	1-1-2008	141-090-0055	1-1-2008	Amend	1-1-2008
141-089-0170	1-1-2008	Amend	1-1-2008	141-102-0000	1-1-2008	Amend	1-1-2008
141-089-0175	1-1-2008	Amend	1-1-2008	141-102-0020	1-1-2008	Amend	1-1-2008
141-089-0180	1-1-2008	Amend	1-1-2008	141-102-0030	1-1-2008	Amend	1-1-2008
141-089-0185	1-1-2008	Amend	1-1-2008	141-102-0045	1-1-2008	Repeal	1-1-2008
141-089-0190	1-1-2008	Amend	1-1-2008	142-010-0010	4-14-2008	Amend	5-1-2008
141-089-0192	1-1-2008	Adopt	1-1-2008	142-010-0020	4-14-2008	Amend	5-1-2008
141-089-0205	1-1-2008	Amend	1-1-2008	142-010-0045	4-14-2008	Amend	5-1-2008
141-089-0215	1-1-2008	Amend	1-1-2008	142-015-0000	4-14-2008	Adopt	5-1-2008
141-089-0225	1-1-2008	Amend	1-1-2008	142-015-0010	4-14-2008	Adopt	5-1-2008
141-089-0230	1-1-2008	Amend	1-1-2008	142-015-0020	4-14-2008	Adopt	5-1-2008
141-089-0245	1-1-2008	Amend	1-1-2008	142-015-0030	4-14-2008	Adopt	5-1-2008
141-089-0260	1-1-2008	Amend	1-1-2008	142-015-0040	4-14-2008	Adopt	5-1-2008
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141-089-0285	1-1-2008	Amend	1-1-2008	150-118.140	5-23-2008	Adopt(T)	7-1-2008
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141-089-0295	1-1-2008	Amend	1-1-2008	150-293.250(2)	2-15-2008	Amend	3-1-2008
141-089-0300	1-1-2008	Amend	1-1-2008	150-305.145(3)	1-1-2008	Amend	2-1-2008
141-089-0302	1-1-2008	Adopt	1-1-2008	150-305.220(2)	1-1-2008	Amend	2-1-2008
141-089-0350	5-1-2008	Adopt	5-1-2008	150-305.270(10)	1-1-2008	Amend	2-1-2008
141-089-0355	5-1-2008	Adopt	5-1-2008	150-305.270(4)-(A)	1-1-2008	Amend	2-1-2008
141-089-0360	5-1-2008	Adopt	5-1-2008	150-305.992	1-1-2008	Amend	2-1-2008
141-089-0365	5-1-2008	Adopt	5-1-2008	150-307.262(2)	1-1-2008	Repeal	2-1-2008
141-089-0370	5-1-2008	Adopt	5-1-2008	150-309.115(1)-(A)	1-1-2008	Repeal	2-1-2008
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150-311.684	1-1-2008	Amend	2-1-2008	160-040-0303	8-1-2008	Amend	8-1-2008
150-311.689	1-1-2008	Amend	2-1-2008	160-040-0304	8-1-2008	Amend	8-1-2008
150-311.806-(A)	1-1-2008	Amend	2-1-2008	160-040-0305	8-1-2008	Amend	8-1-2008
150-314.258	1-1-2008	Adopt	2-1-2008	160-040-0306	8-1-2008	Amend	8-1-2008
150-314.258	5-23-2008	Amend(T)	7-1-2008	160-040-0307	8-1-2008	Amend	8-1-2008
150-314.280-(E)	1-1-2008	Amend	2-1-2008	160-040-0308	8-1-2008	Amend	8-1-2008
150-314.280-(G)	1-1-2008	Amend	2-1-2008	160-040-0309	8-1-2008	Amend	8-1-2008
150-314.280-(H)	1-1-2008	Amend	2-1-2008	160-040-0310	8-1-2008	Amend	8-1-2008
150-314.280-(I)	1-1-2008	Amend	2-1-2008	160-040-0311	8-1-2008	Amend	8-1-2008
150-314.280-(J)	1-1-2008	Amend	2-1-2008	160-040-0312	8-1-2008	Amend	8-1-2008
150-314.280-(K)	1-1-2008	Amend	2-1-2008	160-040-0400	8-1-2008	Amend	8-1-2008
150-314.280-(L)	1-1-2008	Amend	2-1-2008	160-040-0401	8-1-2008	Amend	8-1-2008
150-314.308	1-1-2008	Adopt	2-1-2008	160-040-0402	8-1-2008	Amend	8-1-2008
150-314.415.(7)	1-1-2008	Amend	2-1-2008	160-040-0403	8-1-2008	Amend	8-1-2008
150-314.425-(B)	1-1-2008	Adopt	2-1-2008	160-040-0404	8-1-2008	Adopt	8-1-2008
150-314.615-(D)	1-1-2008	Amend	2-1-2008	160-040-0500	8-1-2008	Amend	8-1-2008
150-314.615-(E)	1-1-2008	Amend	2-1-2008	160-040-0501	8-1-2008	Amend	8-1-2008
150-315.262	1-1-2008	Amend	2-1-2008	160-040-0502	8-1-2008	Amend	8-1-2008
150-315.354(5)	1-1-2008	Amend	2-1-2008	160-040-0503	8-1-2008	Amend	8-1-2008
150-315.521	1-1-2008	Adopt	2-1-2008	160-040-0504	8-1-2008	Amend	8-1-2008
150-316.127-(E)	1-1-2008	Amend	2-1-2008	160-040-0505	8-1-2008	Adopt	8-1-2008
150-316.127(10)	1-1-2008	Adopt	2-1-2008	160-040-0506	8-1-2008	Adopt	8-1-2008
150-317.010	5-5-2008	Adopt	6-1-2008	160-050-0180	1-15-2008	Amend	2-1-2008
150-317.092	1-1-2008	Adopt	2-1-2008	160-050-0190	1-15-2008	Amend	2-1-2008
150-317.705(3)(a)	1-1-2008	Amend	2-1-2008	160-050-0200	1-15-2008	Amend	2-1-2008
150-317.705(3)(b)	1-1-2008	Amend	2-1-2008	160-050-0210	1-15-2008	Amend	2-1-2008
150-321.307(4)	1-1-2008	Repeal	2-1-2008	160-050-0215	1-15-2008	Adopt	2-1-2008
150-321.485(4)	1-1-2008	Repeal	2-1-2008	160-050-0220	1-15-2008	Amend	2-1-2008
150-323.320(1)(b)	2-4-2008	Adopt(T)	3-1-2008	160-050-0230	1-15-2008	Amend	2-1-2008
151-001-0005	12-13-2007	Amend(T)	1-1-2008	160-050-0240	1-15-2008	Amend	2-1-2008
151-001-0005	4-14-2008	Amend	5-1-2008	160-050-0250	1-15-2008	Amend	2-1-2008
151-001-0010	12-13-2007	Amend(T)	1-1-2008	160-050-0280	1-15-2008	Amend	2-1-2008
151-001-0010	4-14-2008	Amend	5-1-2008	160-100-0200	1-15-2008	Amend	1-1-2008
151-001-0015	4-14-2008	Amend	5-1-2008	160-100-0210	5-1-2008	Amend	5-1-2008
151-020-0045	12-13-2007	Amend(T)	1-1-2008	161-002-0000	5-13-2008	Amend	6-1-2008
151-020-0045	4-14-2008	Amend	5-1-2008	161-003-0020	5-13-2008	Amend	6-1-2008
160-005-0005	5-1-2008	Amend	5-1-2008	161-006-0175	5-13-2008	Amend	6-1-2008
160-005-0007	5-1-2008	Adopt	5-1-2008	161-010-0010	5-13-2008	Amend	6-1-2008
160-005-0010	5-1-2008	Amend	5-1-2008	161-010-0035	5-13-2008	Amend	6-1-2008
160-010-0600	1-1-2008	Adopt	1-1-2008	161-010-0045	5-13-2008	Amend	6-1-2008
160-010-0610	1-1-2008	Adopt	1-1-2008	161-010-0055	5-13-2008	Amend	6-1-2008
160-010-0620	1-1-2008	Adopt	1-1-2008	161-010-0080	5-13-2008	Amend	6-1-2008
160-010-0630	1-1-2008	Adopt	1-1-2008	161-020-0110	5-13-2008	Amend	6-1-2008
160-040-0100	8-1-2008	Amend	8-1-2008	161-025-0025	5-13-2008	Amend	6-1-2008
160-040-0101	8-1-2008	Amend	8-1-2008	161-025-0030	5-13-2008	Amend	6-1-2008
160-040-0102	8-1-2008	Amend	8-1-2008	161-025-0060	5-13-2008	Amend	6-1-2008
160-040-0103	8-1-2008	Amend	8-1-2008	161-050-0000	5-13-2008	Amend	6-1-2008
160-040-0104	8-1-2008	Amend	8-1-2008	165-002-0020	12-31-2007	Amend	2-1-2008
160-040-0105	8-1-2008	Amend	8-1-2008	165-004-0005	12-31-2007	Amend	2-1-2008
160-040-0106	8-1-2008	Amend	8-1-2008	165-004-0020	12-31-2007	Amend	2-1-2008
160-040-0107	8-1-2008	Amend	8-1-2008	165-005-0130	12-31-2007	Amend	2-1-2008
160-040-0200	8-1-2008	Amend	8-1-2008	165-007-0030	12-31-2007	Amend	2-1-2008
160-040-0201	8-1-2008	Amend	8-1-2008	165-010-0005	12-31-2007	Amend	2-1-2008
160-040-0202	8-1-2008	Amend	8-1-2008	165-010-0085	12-31-2007	Adopt	2-1-2008
160-040-0203	8-1-2008	Amend	8-1-2008	165-010-1001	5-2-2008	Adopt(T)	6-1-2008
160-040-0204	8-1-2008	Adopt	8-1-2008	165-012-0005	12-31-2007	Amend	2-1-2008
160-040-0205	8-1-2008	Adopt	8-1-2008	165-012-1020	1-29-2008	Adopt(T)	3-1-2008
160-040-0300	8-1-2008	Amend	8-1-2008	165-013-0010	12-31-2007	Amend	2-1-2008
160-040-0301	8-1-2008	Amend	8-1-2008	165-013-0020	12-31-2007	Amend	2-1-2008

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165-014-0030	12-31-2007	Amend	2-1-2008	177-010-0085	7-1-2008	Amend	8-1-2008
165-014-0031	12-31-2007	Adopt	2-1-2008	177-010-0090	7-1-2008	Amend	8-1-2008
165-014-0032	12-31-2007	Adopt	2-1-2008	177-010-0110	7-1-2008	Amend	8-1-2008
165-014-0100	12-31-2007	Adopt	2-1-2008	177-010-0120	7-1-2008	Amend	8-1-2008
165-014-0100	3-14-2008	Amend(T)	4-1-2008	177-040-0003	6-2-2008	Amend	7-1-2008
165-014-0100	5-2-2008	Amend(T)	6-1-2008	177-040-0051	6-2-2008	Amend	7-1-2008
165-014-0110	12-31-2007	Amend	2-1-2008	177-046-0010	7-1-2008	Amend	8-1-2008
165-014-0260	12-31-2007	Amend	2-1-2008	177-046-0015	7-1-2008	Adopt	8-1-2008
165-014-0270	12-31-2007	Amend	2-1-2008	177-046-0020	7-1-2008	Amend	8-1-2008
165-014-0275	12-31-2007	Adopt	2-1-2008	177-046-0030	7-1-2008	Amend	8-1-2008
165-014-0280	12-3-2007	Adopt	1-1-2008	177-046-0040	7-1-2008	Amend	8-1-2008
165-020-0005	12-31-2007	Amend	2-1-2008	177-046-0050	7-1-2008	Amend	8-1-2008
165-020-0020	12-31-2007	Amend	2-1-2008	177-046-0060	7-1-2008	Amend	8-1-2008
165-020-0021	12-31-2007	Adopt	2-1-2008	177-046-0070	7-1-2008	Amend	8-1-2008
165-020-0035	12-31-2007	Amend	2-1-2008	177-046-0080	7-1-2008	Amend	8-1-2008
165-020-0045	12-31-2007	Repeal	2-1-2008	177-046-0090	7-1-2008	Amend	8-1-2008
165-020-0050	12-31-2007	Amend	2-1-2008	177-046-0100	7-1-2008	Amend	8-1-2008
165-020-0055	12-31-2007	Amend	2-1-2008	177-046-0110	3-31-2008	Amend	5-1-2008
165-020-2021	2-21-2008	Adopt(T)	4-1-2008	177-046-0110(T)	3-31-2008	Repeal	5-1-2008
165-021-0000	12-31-2007	Repeal	2-1-2008	177-046-0120	7-1-2008	Amend	8-1-2008
165-021-0005	12-31-2007	Repeal	2-1-2008	177-046-0130	7-1-2008	Amend	8-1-2008
165-021-0010	12-31-2007	Repeal	2-1-2008	177-046-0140	7-1-2008	Amend	8-1-2008
165-100-0000	4-1-2008	Adopt(T)	5-1-2008	177-046-0150	7-1-2008	Amend	8-1-2008
165-100-0005	4-1-2008	Adopt(T)	5-1-2008	177-046-0160	7-1-2008	Amend	8-1-2008
165-100-0010	4-1-2008	Adopt(T)	5-1-2008	177-046-0170	3-31-2008	Amend	5-1-2008
165-100-0015	4-1-2008	Adopt(T)	5-1-2008	177-046-0170	7-1-2008	Amend	8-1-2008
165-100-0020	4-1-2008	Adopt(T)	5-1-2008	177-046-0170(T)	3-31-2008	Repeal	5-1-2008
165-100-0025	4-1-2008	Adopt(T)	5-1-2008	177-050-0002	3-31-2008	Amend	5-1-2008
165-100-0030	4-1-2008	Adopt(T)	5-1-2008	177-050-0002(T)	3-31-2008	Repeal	5-1-2008
166-150-0205	5-30-2008	Amend	7-1-2008	177-050-0020	3-31-2008	Amend	5-1-2008
166-400-0010	1-30-2008	Amend	3-1-2008	177-050-0020(T)	3-31-2008	Repeal	5-1-2008
166-500-0015	11-29-2007	Amend	1-1-2008	177-050-0024	3-31-2008	Amend	5-1-2008
170-002-0010	3-3-2008	Adopt	4-1-2008	177-050-0024(T)	3-31-2008	Repeal	5-1-2008
170-030-0005	7-1-2008	Repeal	8-1-2008	177-050-0025	3-31-2008	Amend	5-1-2008
170-030-0010	7-1-2008	Repeal	8-1-2008	177-050-0025(T)	3-31-2008	Repeal	5-1-2008
170-030-0015	7-1-2008	Repeal	8-1-2008	177-050-0027	3-31-2008	Amend	5-1-2008
170-030-0020	7-1-2008	Repeal	8-1-2008	177-050-0027(T)	3-31-2008	Repeal	5-1-2008
170-030-0025	7-1-2008	Repeal	8-1-2008	177-050-0037	3-31-2008	Amend	5-1-2008
170-030-0030	7-1-2008	Repeal	8-1-2008	177-050-0037(T)	3-31-2008	Repeal	5-1-2008
170-030-0045	7-1-2008	Repeal	8-1-2008	177-050-0070	3-31-2008	Amend	5-1-2008
170-030-0050	7-1-2008	Repeal	8-1-2008	177-050-0070(T)	3-31-2008	Repeal	5-1-2008
170-030-0055	7-1-2008	Repeal	8-1-2008	199-005-0005	3-7-2008	Adopt	4-1-2008
170-040-0020	7-1-2008	Adopt	8-1-2008	199-005-0010	3-7-2008	Adopt	4-1-2008
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170-040-0040	7-1-2008	Adopt	8-1-2008	199-005-0020	3-7-2008	Adopt	4-1-2008
170-040-0050	7-1-2008	Adopt	8-1-2008	199-005-0025	3-7-2008	Adopt	4-1-2008
170-040-0060	7-1-2008	Adopt	8-1-2008	199-005-0030	3-7-2008	Adopt	4-1-2008
170-040-0070	7-1-2008	Adopt	8-1-2008	199-005-0035	3-7-2008	Adopt	4-1-2008
170-040-0080	7-1-2008	Adopt	8-1-2008	199-010-0068	1-2-2008	Adopt(T)	2-1-2008
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170-071-0005	7-9-2008	Amend(T)	8-1-2008	199-020-0005	3-7-2008	Suspend	4-1-2008
177-010-0003	7-1-2008	Amend	8-1-2008	199-020-0007	3-7-2008	Adopt(T)	4-1-2008
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177-010-0011	7-1-2008	Adopt	8-1-2008	213-017-0002	1-1-2008	Amend	2-1-2008
177-010-0025	7-1-2008	Amend	8-1-2008	213-017-0003	1-1-2008	Amend	2-1-2008
177-010-0045	7-1-2008	Amend	8-1-2008	213-017-0004	1-1-2008	Amend	2-1-2008

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213-017-0008	1-1-2008	Amend	2-1-2008	230-130-0110	7-1-2008	Repeal	7-1-2008
213-017-0009	1-1-2008	Amend	2-1-2008	230-130-0120	7-1-2008	Repeal	7-1-2008
213-017-0010	1-1-2008	Amend	2-1-2008	230-130-0140	7-1-2008	Repeal	7-1-2008
213-018-0050	1-1-2008	Amend	2-1-2008	230-130-0150	7-1-2008	Repeal	7-1-2008
213-018-0068	1-1-2008	Adopt	2-1-2008	230-130-0160	7-1-2008	Repeal	7-1-2008
230-001-0000	7-1-2008	Amend	7-1-2008	230-130-0170	7-1-2008	Repeal	7-1-2008
230-001-0005	7-1-2008	Amend	7-1-2008	230-130-0180	7-1-2008	Repeal	7-1-2008
230-001-0010	7-1-2008	Amend	7-1-2008	230-130-0190	7-1-2008	Repeal	7-1-2008
230-010-0000	7-1-2008	Amend	7-1-2008	230-130-0200	7-1-2008	Repeal	7-1-2008
230-010-0005	7-1-2008	Amend	7-1-2008	230-130-0220	7-1-2008	Repeal	7-1-2008
230-010-0010	7-1-2008	Repeal	7-1-2008	230-130-0230	7-1-2008	Repeal	7-1-2008
230-010-0016	7-1-2008	Repeal	7-1-2008	230-140-0000	1-29-2008	Adopt(T)	3-1-2008
230-010-0030	7-1-2008	Repeal	7-1-2008	230-140-0000	7-1-2008	Adopt	7-1-2008
230-010-0040	7-1-2008	Am. & Ren.	7-1-2008	230-140-0010	1-29-2008	Adopt(T)	3-1-2008
230-010-0050	7-1-2008	Repeal	7-1-2008	230-140-0010(T)	7-1-2008	Repeal	7-1-2008
230-020-0005	7-1-2008	Repeal	7-1-2008	230-140-0020	1-29-2008	Adopt(T)	3-1-2008
230-020-0010	7-1-2008	Amend	7-1-2008	230-140-0020	7-1-2008	Adopt	7-1-2008
230-020-0020	7-1-2008	Repeal	7-1-2008	230-140-0030	1-29-2008	Adopt(T)	3-1-2008
230-020-0030	7-1-2008	Amend	7-1-2008	230-140-0030	7-1-2008	Adopt	7-1-2008
230-020-0040	7-1-2008	Amend	7-1-2008	230-140-0040	1-29-2008	Adopt(T)	3-1-2008
230-020-0050	7-1-2008	Repeal	7-1-2008	230-140-0040	7-1-2008	Adopt	7-1-2008
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230-020-0110	7-1-2008	Amend	7-1-2008	250-015-0003	5-7-2008	Adopt(T)	6-1-2008
230-020-0170	7-1-2008	Amend	7-1-2008	250-020-0032	7-11-2008	Amend	8-1-2008
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230-020-0195	7-1-2008	Adopt	7-1-2008	250-020-0102	4-26-2008	Amend	5-1-2008
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230-020-0215	7-1-2008	Adopt	7-1-2008	255-070-0003	4-9-2008	Amend	5-1-2008
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230-020-0240	7-1-2008	Amend	7-1-2008	259-008-0010(T)	1-15-2008	Suspend	2-1-2008
230-020-0250	7-1-2008	Repeal	7-1-2008	259-008-0010(T)	4-15-2008	Repeal	5-1-2008
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230-020-0310	7-1-2008	Amend	7-1-2008	259-008-0025	7-15-2008	Amend	8-1-2008
230-020-0320	7-1-2008	Amend	7-1-2008	259-008-0045	7-15-2008	Amend	8-1-2008
230-020-0330	7-1-2008	Amend	7-1-2008	259-008-0060	1-15-2008	Amend	2-1-2008
230-020-0405	7-1-2008	Amend	7-1-2008	259-008-0060	7-15-2008	Amend	8-1-2008
230-020-0410	7-1-2008	Amend	7-1-2008	259-009-0005	7-15-2008	Amend	8-1-2008
230-020-0440	7-1-2008	Repeal	7-1-2008	259-009-0062	7-15-2008	Amend	8-1-2008
230-020-0450	7-1-2008	Amend	7-1-2008	259-009-0070	1-15-2008	Amend	2-1-2008
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230-050-0005	7-1-2008	Repeal	7-1-2008	259-060-0120	4-15-2008	Amend	5-1-2008
230-130-0000	7-1-2008	Repeal	7-1-2008	259-060-0130	4-15-2008	Amend	5-1-2008
230-130-0005	7-1-2008	Repeal	7-1-2008	259-060-0135	4-15-2008	Amend	5-1-2008
230-130-0010	7-1-2008	Repeal	7-1-2008	259-060-0450	4-15-2008	Amend	5-1-2008
230-130-0020	7-1-2008	Repeal	7-1-2008	259-060-0500	4-15-2008	Amend	5-1-2008
230-130-0030	7-1-2008	Repeal	7-1-2008	259-061-0015	4-15-2008	Amend	5-1-2008
230-130-0040	7-1-2008	Repeal	7-1-2008	259-061-0040	5-15-2008	Amend(T)	6-1-2008
230-130-0050	7-1-2008	Repeal	7-1-2008	259-061-0040	7-15-2008	Amend	8-1-2008
230-130-0060	7-1-2008	Repeal	7-1-2008	259-061-0040(T)	7-15-2008	Repeal	8-1-2008
230-130-0070	7-1-2008	Repeal	7-1-2008	259-061-0090	5-15-2008	Amend(T)	6-1-2008
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259-061-0230	5-15-2008	Amend(T)	6-1-2008	291-026-0050	3-4-2008	Adopt(T)	4-1-2008
259-061-0230	7-15-2008	Amend	8-1-2008	291-026-0085	3-4-2008	Suspend	4-1-2008
259-061-0230(T)	7-15-2008	Repeal	8-1-2008	291-026-0095	3-4-2008	Suspend	4-1-2008
274-001-0005	3-25-2008	Amend	5-1-2008	291-026-0105	3-4-2008	Amend(T)	4-1-2008
274-012-0001	1-7-2008	Amend(T)	2-1-2008	291-026-0115	3-4-2008	Amend(T)	4-1-2008
274-012-0001	2-22-2008	Amend	4-1-2008	291-026-0125	3-4-2008	Amend(T)	4-1-2008
274-012-0100	1-7-2008	Amend(T)	2-1-2008	291-026-0140	3-4-2008	Adopt(T)	4-1-2008
274-012-0100	2-22-2008	Amend	4-1-2008	291-041-0010	2-4-2008	Amend	3-1-2008
274-012-0120	1-7-2008	Amend(T)	2-1-2008	291-041-0015	2-4-2008	Amend	3-1-2008
274-012-0120	2-22-2008	Amend	4-1-2008	291-041-0016	2-4-2008	Amend	3-1-2008
274-015-0005	2-22-2008	Repeal	4-1-2008	291-041-0017	2-4-2008	Adopt	3-1-2008
274-025-0030	2-22-2008	Amend	4-1-2008	291-041-0020	2-4-2008	Amend	3-1-2008
274-030-0500	1-1-2008	Amend	2-1-2008	291-041-0030	2-4-2008	Amend	3-1-2008
274-030-0500	2-4-2008	Amend	3-1-2008	291-041-0035	2-4-2008	Amend	3-1-2008
274-030-0500(T)	1-1-2008	Repeal	2-1-2008	291-041-0040	2-4-2008	Repeal	3-1-2008
274-030-0505	1-1-2008	Amend	2-1-2008	291-042-0005	7-1-2008	Amend(T)	8-1-2008
274-030-0505(T)	1-1-2008	Repeal	2-1-2008	291-042-0010	7-1-2008	Amend(T)	8-1-2008
274-030-0506	1-1-2008	Amend	2-1-2008	291-042-0011	7-1-2008	Amend(T)	8-1-2008
274-030-0506(T)	1-1-2008	Repeal	2-1-2008	291-042-0015	7-1-2008	Amend(T)	8-1-2008
274-030-0510	1-1-2008	Amend	2-1-2008	291-042-0025	7-1-2008	Amend(T)	8-1-2008
274-030-0510(T)	1-1-2008	Repeal	2-1-2008	291-042-0035	7-1-2008	Amend(T)	8-1-2008
274-030-0515	1-1-2008	Amend	2-1-2008	291-042-0045	7-1-2008	Suspend	8-1-2008
274-030-0520	1-1-2008	Amend	2-1-2008	291-055-0010	4-1-2008	Amend(T)	5-1-2008
274-030-0520(T)	1-1-2008	Repeal	2-1-2008	291-069-0010	12-1-2007	Suspend	1-1-2008
274-030-0535	1-1-2008	Amend	2-1-2008	291-069-0010	5-19-2008	Repeal	7-1-2008
274-030-0545	1-1-2008	Amend	2-1-2008	291-069-0020	12-1-2007	Suspend	1-1-2008
274-030-0545(T)	1-1-2008	Repeal	2-1-2008	291-069-0020	5-19-2008	Repeal	7-1-2008
274-030-0550	1-1-2008	Amend	2-1-2008	291-069-0031	12-1-2007	Suspend	1-1-2008
274-030-0550(T)	1-1-2008	Repeal	2-1-2008	291-069-0031	5-19-2008	Repeal	7-1-2008
274-030-0555	1-1-2008	Amend	2-1-2008	291-069-0040	12-1-2007	Suspend	1-1-2008
274-030-0555(T)	1-1-2008	Repeal	2-1-2008	291-069-0040	5-19-2008	Repeal	7-1-2008
274-030-0560	1-1-2008	Amend	2-1-2008	291-069-0050	12-1-2007	Suspend	1-1-2008
274-030-0560(T)	1-1-2008	Repeal	2-1-2008	291-069-0050	5-19-2008	Repeal	7-1-2008
274-030-0565	1-1-2008	Amend	2-1-2008	291-069-0060	12-1-2007	Suspend	1-1-2008
274-030-0565(T)	1-1-2008	Repeal	2-1-2008	291-069-0060	5-19-2008	Repeal	7-1-2008
274-030-0570	1-1-2008	Amend	2-1-2008	291-069-0070	12-1-2007	Suspend	1-1-2008
274-030-0570(T)	1-1-2008	Repeal	2-1-2008	291-069-0070	5-19-2008	Repeal	7-1-2008
274-030-0575	1-1-2008	Amend	2-1-2008	291-069-0090	12-1-2007	Suspend	1-1-2008
274-030-0575(T)	1-1-2008	Repeal	2-1-2008	291-069-0090	5-19-2008	Repeal	7-1-2008
274-030-0600	1-1-2008	Amend	2-1-2008	291-069-0100	12-1-2007	Suspend	1-1-2008
274-030-0600(T)	1-1-2008	Repeal	2-1-2008	291-069-0100	5-19-2008	Repeal	7-1-2008
274-030-0602	1-1-2008	Adopt	2-1-2008	291-069-0200	12-1-2007	Adopt(T)	1-1-2008
274-030-0602(T)	1-1-2008	Repeal	2-1-2008	291-069-0200	5-19-2008	Adopt	7-1-2008
274-030-0605	1-1-2008	Repeal	2-1-2008	291-069-0210	12-1-2007	Adopt(T)	1-1-2008
274-030-0610	1-1-2008	Amend	2-1-2008	291-069-0210	5-19-2008	Adopt	7-1-2008
274-030-0610(T)	1-1-2008	Repeal	2-1-2008	291-069-0220	12-1-2007	Adopt(T)	1-1-2008
274-030-0620	1-1-2008	Amend	2-1-2008	291-069-0220	5-19-2008	Adopt	7-1-2008
274-030-0620(T)	1-1-2008	Repeal	2-1-2008	291-069-0230	12-1-2007	Adopt(T)	1-1-2008
274-030-0630	1-1-2008	Amend	2-1-2008	291-069-0230	5-19-2008	Adopt	7-1-2008
274-030-0630(T)	1-1-2008	Repeal	2-1-2008	291-069-0240	12-1-2007	Adopt(T)	1-1-2008
274-030-0640	1-1-2008	Amend	2-1-2008	291-069-0240	5-19-2008	Adopt	7-1-2008
274-030-0640(T)	1-1-2008	Repeal	2-1-2008	291-069-0250	12-1-2007	Adopt(T)	1-1-2008
274-045-0060	2-22-2008	Amend	4-1-2008	291-069-0250	5-19-2008	Adopt	7-1-2008
274-045-0240	2-22-2008	Amend	4-1-2008	291-069-0260	12-1-2007	Adopt(T)	1-1-2008
291-011-0010	4-1-2008	Amend(T)	5-1-2008	291-069-0260	5-19-2008	Adopt	7-1-2008
291-026-0005	3-4-2008	Amend(T)	4-1-2008	291-069-0270	12-1-2007	Adopt(T)	1-1-2008
291-026-0010	3-4-2008	Amend(T)	4-1-2008	291-069-0270	5-19-2008	Adopt	7-1-2008
291-026-0015	3-4-2008	Amend(T)	4-1-2008	291-069-0280	12-1-2007	Adopt(T)	1-1-2008
291-026-0025	3-4-2008	Amend(T)	4-1-2008	291-069-0280	5-19-2008	Adopt	7-1-2008

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291-070-0010	4-10-2008	Am. & Ren.	5-1-2008	291-105-0085	6-2-2008	Amend	7-1-2008
291-070-0015	4-10-2008	Repeal	5-1-2008	291-105-0100	6-2-2008	Amend	7-1-2008
291-070-0020	4-10-2008	Repeal	5-1-2008	291-127-0210	4-1-2008	Amend(T)	5-1-2008
291-070-0025	4-10-2008	Repeal	5-1-2008	291-127-0260	4-1-2008	Amend(T)	5-1-2008
291-070-0026	4-10-2008	Repeal	5-1-2008	291-131-0010	1-25-2008	Amend	3-1-2008
291-070-0027	4-10-2008	Repeal	5-1-2008	291-131-0015	1-25-2008	Amend	3-1-2008
291-070-0028	4-10-2008	Repeal	5-1-2008	291-131-0020	1-25-2008	Amend	3-1-2008
291-070-0030	4-10-2008	Repeal	5-1-2008	291-131-0025	1-25-2008	Amend	3-1-2008
291-070-0035	4-10-2008	Repeal	5-1-2008	291-131-0030	1-25-2008	Amend	3-1-2008
291-070-0041	4-10-2008	Repeal	5-1-2008	291-131-0035	1-25-2008	Amend	3-1-2008
291-070-0043	4-10-2008	Repeal	5-1-2008	291-131-0037	1-25-2008	Amend	3-1-2008
291-070-0045	4-10-2008	Repeal	5-1-2008	291-133-0005	4-1-2008	Amend(T)	5-1-2008
291-070-0050	4-10-2008	Repeal	5-1-2008	291-133-0010	4-1-2008	Amend(T)	5-1-2008
291-070-0055	4-10-2008	Repeal	5-1-2008	291-133-0015	4-1-2008	Amend(T)	5-1-2008
291-070-0056	4-10-2008	Repeal	5-1-2008	291-133-0025	4-1-2008	Amend(T)	5-1-2008
291-070-0080	4-10-2008	Repeal	5-1-2008	291-133-0035	4-1-2008	Amend(T)	5-1-2008
291-070-0115	4-10-2008	Adopt	5-1-2008	291-133-0045	4-1-2008	Suspend	5-1-2008
291-070-0120	4-10-2008	Adopt	5-1-2008	291-158-0005	7-1-2008	Amend(T)	8-1-2008
291-070-0125	4-10-2008	Adopt	5-1-2008	291-158-0015	7-1-2008	Amend(T)	8-1-2008
291-070-0130	4-10-2008	Adopt	5-1-2008	291-158-0055	7-1-2008	Amend(T)	8-1-2008
291-070-0135	4-10-2008	Adopt	5-1-2008	291-164-0005	3-4-2008	Amend(T)	4-1-2008
291-070-0140	4-10-2008	Adopt	5-1-2008	291-164-0010	3-4-2008	Amend(T)	4-1-2008
291-082-0010	5-13-2008	Am. & Ren.(T)	6-1-2008	291-164-0015	3-4-2008	Amend(T)	4-1-2008
291-082-0020	5-13-2008	Am. & Ren.(T)	6-1-2008	291-164-0020	3-4-2008	Amend(T)	4-1-2008
291-082-0021	5-13-2008	Am. & Ren.(T)	6-1-2008	291-164-0025	3-4-2008	Amend(T)	4-1-2008
291-082-0025	5-13-2008	Suspend	6-1-2008	291-164-0030	3-4-2008	Amend(T)	4-1-2008
291-082-0026	5-13-2008	Suspend	6-1-2008	291-164-0045	3-4-2008	Suspend	4-1-2008
291-082-0027	5-13-2008	Suspend	6-1-2008	291-164-0050	3-4-2008	Adopt(T)	4-1-2008
291-082-0035	5-13-2008	Am. & Ren.(T)	6-1-2008	291-205-0010	5-15-2008	Adopt(T)	6-1-2008
291-082-0045	5-13-2008	Am. & Ren.(T)	6-1-2008	291-205-0020	5-15-2008	Adopt(T)	6-1-2008
291-082-0110	5-13-2008	Adopt(T)	6-1-2008	291-205-0030	5-15-2008	Adopt(T)	6-1-2008
291-082-0115	5-13-2008	Adopt(T)	6-1-2008	291-205-0040	5-15-2008	Adopt(T)	6-1-2008
291-082-0120	5-13-2008	Adopt(T)	6-1-2008	291-205-0050	5-15-2008	Adopt(T)	6-1-2008
291-082-0125	5-13-2008	Adopt(T)	6-1-2008	291-205-0060	5-15-2008	Adopt(T)	6-1-2008
291-082-0130	5-13-2008	Adopt(T)	6-1-2008	291-205-0070	5-15-2008	Adopt(T)	6-1-2008
291-104-0005	5-13-2008	Am. & Ren.	6-1-2008	291-205-0080	5-15-2008	Adopt(T)	6-1-2008
291-104-0010	5-13-2008	Repeal	6-1-2008	291-205-0090	5-15-2008	Adopt(T)	6-1-2008
291-104-0015	5-13-2008	Repeal	6-1-2008	291-205-0100	5-15-2008	Adopt(T)	6-1-2008
291-104-0025	5-13-2008	Repeal	6-1-2008	291-205-0110	5-15-2008	Adopt(T)	6-1-2008
291-104-0030	5-13-2008	Repeal	6-1-2008	309-011-0100	12-5-2007	Adopt(T)	1-1-2008
291-104-0033	5-13-2008	Repeal	6-1-2008	309-011-0100	2-12-2008	Suspend	3-1-2008
291-104-0035	5-13-2008	Repeal	6-1-2008	309-031-0215	12-1-2007	Amend(T)	1-1-2008
291-104-0111	5-13-2008	Amend	6-1-2008	309-032-0455	12-11-2007	Amend	1-1-2008
291-104-0116	5-13-2008	Amend	6-1-2008	309-032-1095	4-15-2008	Adopt	5-1-2008
291-104-0125	5-13-2008	Amend	6-1-2008	309-032-1190	1-1-2008	Amend(T)	2-1-2008
291-104-0130	5-13-2008	Repeal	6-1-2008	309-032-1190	6-27-2008	Amend	8-1-2008
291-104-0135	5-13-2008	Amend	6-1-2008	309-032-1190(T)	6-27-2008	Repeal	8-1-2008
291-104-0140	5-13-2008	Adopt	6-1-2008	309-033-0710	6-27-2008	Amend	8-1-2008
291-105-0010	6-2-2008	Amend	7-1-2008	309-033-0735	1-1-2008	Adopt(T)	2-1-2008
291-105-0021	6-2-2008	Amend	7-1-2008	309-033-0735	6-27-2008	Adopt	8-1-2008
291-105-0026	6-2-2008	Amend	7-1-2008	309-033-0735(T)	6-27-2008	Repeal	8-1-2008
291-105-0028	6-2-2008	Amend	7-1-2008	309-035-0100	6-12-2008	Amend	7-1-2008
291-105-0041	6-2-2008	Amend	7-1-2008	309-035-0105	6-12-2008	Amend	7-1-2008
291-105-0046	6-2-2008	Amend	7-1-2008	309-035-0110	6-12-2008	Amend	7-1-2008
291-105-0056	6-2-2008	Amend	7-1-2008	309-035-0113	6-12-2008	Amend	7-1-2008
291-105-0064	6-2-2008	Amend	7-1-2008	309-035-0117	6-12-2008	Amend	7-1-2008
291-105-0066	6-2-2008	Amend	7-1-2008	309-035-0120	6-12-2008	Amend	7-1-2008
291-105-0069	6-2-2008	Amend	7-1-2008	309-035-0125	6-12-2008	Amend	7-1-2008
291-105-0071	6-2-2008	Amend	7-1-2008	309-035-0145	6-12-2008	Amend	7-1-2008

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309-035-0157	6-12-2008	Amend	7-1-2008	330-090-0110	12-1-2007	Amend	1-1-2008
309-035-0165	6-12-2008	Amend	7-1-2008	330-090-0110	3-21-2008	Amend	5-1-2008
309-035-0167	6-12-2008	Amend	7-1-2008	330-090-0110	6-20-2008	Amend	8-1-2008
309-035-0170	6-12-2008	Amend	7-1-2008	330-090-0120	12-1-2007	Amend	1-1-2008
309-035-0185	6-12-2008	Amend	7-1-2008	330-090-0120	3-21-2008	Amend	5-1-2008
309-035-0190	6-12-2008	Amend	7-1-2008	330-090-0120	6-20-2008	Amend	8-1-2008
309-114-0000	12-1-2007	Amend(T)	1-1-2008	330-090-0130	12-1-2007	Amend	1-1-2008
309-114-0000	4-7-2008	Amend(T)	5-1-2008	330-090-0130	3-21-2008	Amend	5-1-2008
309-114-0000(T)	4-7-2008	Suspend	5-1-2008	330-090-0130	6-20-2008	Amend	8-1-2008
309-114-0005	12-1-2007	Amend(T)	1-1-2008	330-090-0135	12-1-2007	Amend	1-1-2008
309-114-0005	4-7-2008	Amend(T)	5-1-2008	330-090-0140	12-1-2007	Amend	1-1-2008
309-114-0005(T)	4-7-2008	Suspend	5-1-2008	330-090-0140	3-21-2008	Amend	5-1-2008
309-114-0010	12-1-2007	Amend(T)	1-1-2008	330-090-0150	12-1-2007	Amend	1-1-2008
309-114-0010	4-7-2008	Amend(T)	5-1-2008	330-090-0150	3-21-2008	Amend	5-1-2008
309-114-0010(T)	4-7-2008	Suspend	5-1-2008	330-090-0150	6-20-2008	Amend	8-1-2008
309-114-0015	12-1-2007	Amend(T)	1-1-2008	330-092-0005	3-1-2008	Adopt	4-1-2008
309-114-0015	4-7-2008	Amend(T)	5-1-2008	330-092-0010	3-1-2008	Adopt	4-1-2008
309-114-0015(T)	4-7-2008	Suspend	5-1-2008	330-092-0015	3-1-2008	Adopt	4-1-2008
309-114-0020	12-1-2007	Amend(T)	1-1-2008	330-092-0020	3-1-2008	Adopt	4-1-2008
309-114-0020	4-7-2008	Amend(T)	5-1-2008	330-092-0025	3-1-2008	Adopt	4-1-2008
309-114-0020(T)	4-7-2008	Suspend	5-1-2008	330-092-0030	3-1-2008	Adopt	4-1-2008
309-114-0025	12-1-2007	Amend(T)	1-1-2008	330-092-0035	3-1-2008	Adopt	4-1-2008
309-114-0025	4-7-2008	Amend(T)	5-1-2008	330-092-0040	3-1-2008	Adopt	4-1-2008
309-114-0025(T)	4-7-2008	Suspend	5-1-2008	330-092-0045	3-1-2008	Adopt	4-1-2008
309-114-0030	4-7-2008	Adopt(T)	5-1-2008	330-092-0050	3-1-2008	Adopt	4-1-2008
309-118-0015	12-1-2007	Amend(T)	1-1-2008	330-092-0055	3-1-2008	Adopt	4-1-2008
325-001-0000	4-14-2008	Adopt	5-1-2008	330-092-0060	3-1-2008	Adopt	4-1-2008
325-001-0001	4-14-2008	Amend	5-1-2008	330-092-0065	3-1-2008	Adopt	4-1-2008
330-007-0200	12-13-2007	Adopt	1-1-2008	330-092-0070	3-1-2008	Adopt	4-1-2008
330-007-0210	12-13-2007	Adopt	1-1-2008	330-135-0010	1-2-2008	Adopt	2-1-2008
330-007-0220	12-13-2007	Adopt	1-1-2008	330-135-0015	1-2-2008	Adopt	2-1-2008
330-007-0230	12-13-2007	Adopt	1-1-2008	330-135-0020	1-2-2008	Adopt	2-1-2008
330-007-0240	12-13-2007	Adopt	1-1-2008	330-135-0025	1-2-2008	Adopt	2-1-2008
330-007-0250	12-13-2007	Adopt	1-1-2008	330-135-0030	1-2-2008	Adopt	2-1-2008
330-007-0260	12-13-2007	Adopt	1-1-2008	330-135-0035	1-2-2008	Adopt	2-1-2008
330-007-0270	12-13-2007	Adopt	1-1-2008	330-135-0040	1-2-2008	Adopt	2-1-2008
330-007-0280	12-13-2007	Adopt	1-1-2008	330-135-0045	1-2-2008	Adopt	2-1-2008
330-007-0290	12-13-2007	Adopt	1-1-2008	330-135-0050	1-2-2008	Adopt	2-1-2008
330-007-0300	12-13-2007	Adopt	1-1-2008	330-135-0055	1-2-2008	Adopt	2-1-2008
330-007-0310	12-13-2007	Adopt	1-1-2008	330-150-0005	1-30-2008	Adopt	3-1-2008
330-007-0320	12-13-2007	Adopt	1-1-2008	330-150-0015	1-30-2008	Adopt	3-1-2008
330-007-0330	12-13-2007	Adopt	1-1-2008	330-150-0020	1-30-2008	Adopt	3-1-2008
330-070-0010	12-1-2007	Amend	1-1-2008	330-150-0025	1-30-2008	Adopt	3-1-2008
330-070-0013	12-1-2007	Amend	1-1-2008	330-150-0030	1-30-2008	Adopt	3-1-2008
330-070-0014	12-1-2007	Amend	1-1-2008	331-800-0010	3-15-2008	Adopt(T)	4-1-2008
330-070-0021	12-1-2007	Amend	1-1-2008	331-800-0010	6-1-2008	Adopt	7-1-2008
330-070-0022	12-1-2007	Amend	1-1-2008	331-800-0010(T)	6-1-2008	Repeal	7-1-2008
330-070-0025	12-1-2007	Amend	1-1-2008	331-800-0020	3-15-2008	Adopt(T)	4-1-2008
330-070-0026	12-1-2007	Amend	1-1-2008	331-800-0020	6-1-2008	Adopt	7-1-2008
330-070-0048	12-1-2007	Amend	1-1-2008	331-800-0020(T)	6-1-2008	Repeal	7-1-2008
330-070-0059	12-1-2007	Amend	1-1-2008	331-810-0020	3-15-2008	Adopt(T)	4-1-2008
330-070-0060	12-1-2007	Amend	1-1-2008	331-810-0020	6-1-2008	Adopt	7-1-2008
330-070-0064	12-1-2007	Amend	1-1-2008	331-810-0020(T)	6-1-2008	Repeal	7-1-2008
330-070-0073	12-1-2007	Amend	1-1-2008	331-810-0030	3-15-2008	Adopt(T)	4-1-2008
330-070-0089	12-1-2007	Amend	1-1-2008	331-810-0030	6-1-2008	Adopt	7-1-2008
330-070-0091	12-1-2007	Amend	1-1-2008	331-810-0030(T)	6-1-2008	Repeal	7-1-2008
330-070-0097	12-1-2007	Amend	1-1-2008	331-810-0035	3-15-2008	Adopt(T)	4-1-2008
330-090-0105	12-1-2007	Amend	1-1-2008	331-810-0035	6-1-2008	Adopt	7-1-2008
330-090-0105	3-21-2008	Amend	5-1-2008	331-810-0035(T)	6-1-2008	Repeal	7-1-2008

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331-810-0040	6-1-2008	Adopt	7-1-2008	333-010-0150	6-16-2008	Adopt	8-1-2008
331-810-0040(T)	6-1-2008	Repeal	7-1-2008	333-010-0155	6-16-2008	Adopt	8-1-2008
331-810-0050	6-1-2008	Adopt	7-1-2008	333-010-0160	6-16-2008	Adopt	8-1-2008
331-810-0055	6-1-2008	Adopt	7-1-2008	333-010-0165	6-16-2008	Adopt	8-1-2008
331-820-0010	3-15-2008	Adopt(T)	4-1-2008	333-010-0170	6-16-2008	Adopt	8-1-2008
331-820-0010	6-1-2008	Adopt	7-1-2008	333-010-0175	6-16-2008	Adopt	8-1-2008
331-820-0010(T)	6-1-2008	Repeal	7-1-2008	333-010-0180	6-16-2008	Adopt	8-1-2008
331-820-0020	3-15-2008	Adopt(T)	4-1-2008	333-010-0185	6-16-2008	Adopt	8-1-2008
331-820-0020	6-1-2008	Adopt	7-1-2008	333-010-0190	6-16-2008	Adopt	8-1-2008
331-820-0020(T)	6-1-2008	Repeal	7-1-2008	333-010-0195	6-16-2008	Adopt	8-1-2008
331-830-0005	6-1-2008	Adopt	7-1-2008	333-049-0010	3-17-2008	Amend	5-1-2008
331-830-0010	6-1-2008	Adopt	7-1-2008	333-049-0020	3-17-2008	Amend	5-1-2008
331-830-0020	6-1-2008	Adopt	7-1-2008	333-049-0030	3-17-2008	Amend	5-1-2008
331-840-0010	6-1-2008	Adopt	7-1-2008	333-049-0040	3-17-2008	Amend	5-1-2008
331-840-0020	6-1-2008	Adopt	7-1-2008	333-049-0050	3-17-2008	Amend	5-1-2008
331-840-0030	6-1-2008	Adopt	7-1-2008	333-049-0060	3-17-2008	Amend	5-1-2008
331-840-0040	6-1-2008	Adopt	7-1-2008	333-049-0065	3-17-2008	Amend	5-1-2008
331-840-0050	6-1-2008	Adopt	7-1-2008	333-049-0070	3-17-2008	Amend	5-1-2008
331-840-0060	6-1-2008	Adopt	7-1-2008	333-049-0080	3-17-2008	Amend	5-1-2008
331-850-0010	3-15-2008	Adopt(T)	4-1-2008	333-049-0090	3-17-2008	Amend	5-1-2008
331-850-0010	6-1-2008	Adopt	7-1-2008	333-049-0110	3-17-2008	Repeal	5-1-2008
331-850-0010(T)	6-1-2008	Repeal	7-1-2008	333-049-0120	3-17-2008	Amend	5-1-2008
333-003-0010	5-5-2008	Amend	6-1-2008	333-050-0010	3-17-2008	Amend	5-1-2008
333-003-0020	5-5-2008	Amend	6-1-2008	333-050-0020	1-8-2008	Amend(T)	2-1-2008
333-003-0030	5-5-2008	Repeal	6-1-2008	333-050-0020	3-17-2008	Amend	5-1-2008
333-003-0040	5-5-2008	Amend	6-1-2008	333-050-0030	3-17-2008	Amend	5-1-2008
333-003-0050	5-5-2008	Amend	6-1-2008	333-050-0040	3-17-2008	Amend	5-1-2008
333-003-0060	5-5-2008	Repeal	6-1-2008	333-050-0050	1-8-2008	Amend(T)	2-1-2008
333-003-0065	5-5-2008	Adopt	6-1-2008	333-050-0050	3-17-2008	Amend	5-1-2008
333-003-0070	5-5-2008	Amend	6-1-2008	333-050-0060	3-17-2008	Amend	5-1-2008
333-003-0080	5-5-2008	Amend	6-1-2008	333-050-0070	3-17-2008	Amend	5-1-2008
333-003-0105	5-5-2008	Amend	6-1-2008	333-050-0080	3-17-2008	Amend	5-1-2008
333-003-0110	5-5-2008	Amend	6-1-2008	333-050-0090	3-17-2008	Amend	5-1-2008
333-003-0115	5-5-2008	Amend	6-1-2008	333-050-0095	3-17-2008	Amend	5-1-2008
333-003-0125	5-5-2008	Amend	6-1-2008	333-050-0100	3-17-2008	Amend	5-1-2008
333-003-0130	5-5-2008	Amend	6-1-2008	333-050-0110	3-17-2008	Amend	5-1-2008
333-003-0200	5-5-2008	Adopt	6-1-2008	333-050-0120	1-8-2008	Amend(T)	2-1-2008
333-008-0000	1-1-2008	Amend	2-1-2008	333-050-0120	3-17-2008	Amend	5-1-2008
333-008-0010	1-1-2008	Amend	2-1-2008	333-050-0130	3-17-2008	Amend	5-1-2008
333-008-0020	1-1-2008	Amend	2-1-2008	333-050-0140	3-17-2008	Amend	5-1-2008
333-008-0025	1-1-2008	Amend	2-1-2008	333-052-0030	4-3-2008	Amend	5-1-2008
333-008-0030	1-1-2008	Amend	2-1-2008	333-052-0040	4-3-2008	Amend	5-1-2008
333-008-0040	1-1-2008	Amend	2-1-2008	333-052-0050	4-3-2008	Amend	5-1-2008
333-008-0050	1-1-2008	Amend	2-1-2008	333-052-0060	4-3-2008	Amend	5-1-2008
333-008-0060	1-1-2008	Amend	2-1-2008	333-052-0065	4-3-2008	Amend	5-1-2008
333-008-0070	1-1-2008	Amend	2-1-2008	333-052-0070	4-3-2008	Amend	5-1-2008
333-008-0080	1-1-2008	Amend	2-1-2008	333-052-0075	4-3-2008	Amend	5-1-2008
333-008-0090	1-1-2008	Amend	2-1-2008	333-052-0080	4-3-2008	Amend	5-1-2008
333-008-0110	1-1-2008	Amend	2-1-2008	333-052-0090	4-3-2008	Amend	5-1-2008
333-008-0120	1-1-2008	Amend	2-1-2008	333-052-0100	4-3-2008	Amend	5-1-2008
333-010-0100	6-16-2008	Adopt	8-1-2008	333-052-0110	4-3-2008	Amend	5-1-2008
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333-010-0110	6-16-2008	Adopt	8-1-2008	333-052-0130	4-3-2008	Amend	5-1-2008
333-010-0115	6-16-2008	Adopt	8-1-2008	333-061-0030	2-15-2008	Amend	3-1-2008
333-010-0120	6-16-2008	Adopt	8-1-2008	333-061-0032	2-15-2008	Amend	3-1-2008
333-010-0125	6-16-2008	Adopt	8-1-2008	333-061-0034	2-15-2008	Amend	3-1-2008
333-010-0130	6-16-2008	Adopt	8-1-2008	333-061-0036	2-15-2008	Amend	3-1-2008
333-010-0135	6-16-2008	Adopt	8-1-2008	333-061-0040	2-15-2008	Amend	3-1-2008
333-010-0140	6-16-2008	Adopt	8-1-2008	333-061-0043	2-15-2008	Amend	3-1-2008

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333-061-0050	2-15-2008	Amend	3-1-2008	335-001-0005	4-10-2008	Amend	5-1-2008
333-061-0061	2-15-2008	Amend	3-1-2008	335-001-0008	4-10-2008	Adopt	5-1-2008
333-061-0070	2-15-2008	Amend	3-1-2008	335-001-0011	4-10-2008	Amend	5-1-2008
333-061-0072	2-15-2008	Amend	3-1-2008	335-005-0010	4-10-2008	Amend	5-1-2008
333-061-0076	2-15-2008	Amend	3-1-2008	335-005-0020	4-10-2008	Amend	5-1-2008
333-061-0215	2-15-2008	Amend	3-1-2008	335-060-0010	4-10-2008	Amend	5-1-2008
333-061-0245	2-15-2008	Amend	3-1-2008	335-070-0040	4-10-2008	Amend	5-1-2008
333-061-0250	2-15-2008	Amend	3-1-2008	335-095-0010	4-10-2008	Amend	5-1-2008
333-061-0260	2-15-2008	Amend	3-1-2008	335-095-0030	4-10-2008	Amend	5-1-2008
333-061-0265	2-15-2008	Amend	3-1-2008	335-095-0040	4-10-2008	Amend	5-1-2008
333-080-0040	7-1-2008	Adopt	4-1-2008	335-095-0050	4-10-2008	Amend	5-1-2008
333-080-0050	7-1-2008	Adopt	4-1-2008	335-095-0055	4-10-2008	Amend	5-1-2008
333-150-0000	3-5-2008	Amend	4-1-2008	335-095-0060	4-10-2008	Amend	5-1-2008
333-265-0000	6-16-2008	Amend	8-1-2008	335-095-0065	4-10-2008	Amend	5-1-2008
333-265-0010	6-16-2008	Amend	8-1-2008	340-011-0005	3-20-2008	Amend	5-1-2008
333-265-0012	6-16-2008	Adopt	8-1-2008	340-011-0009	3-20-2008	Adopt	5-1-2008
333-265-0014	6-16-2008	Adopt	8-1-2008	340-011-0010	2-25-2008	Amend	4-1-2008
333-265-0016	6-16-2008	Adopt	8-1-2008	340-011-0029	2-25-2008	Amend	4-1-2008
333-265-0018	6-16-2008	Adopt	8-1-2008	340-011-0510	3-20-2008	Amend	5-1-2008
333-265-0020	6-16-2008	Amend	8-1-2008	340-011-0515	3-20-2008	Amend	5-1-2008
333-265-0022	6-16-2008	Adopt	8-1-2008	340-011-0573	3-20-2008	Adopt	5-1-2008
333-265-0023	6-16-2008	Adopt	8-1-2008	340-011-0575	3-20-2008	Amend	5-1-2008
333-265-0025	6-16-2008	Amend	8-1-2008	340-016-0210	7-11-2008	Amend	8-1-2008
333-265-0025	6-20-2008	Amend(T)	8-1-2008	340-016-0220	7-11-2008	Amend	8-1-2008
333-265-0030	6-16-2008	Amend	8-1-2008	340-016-0230	7-11-2008	Amend	8-1-2008
333-265-0040	6-16-2008	Amend	8-1-2008	340-016-0250	7-11-2008	Amend	8-1-2008
333-265-0040	6-20-2008	Amend(T)	8-1-2008	340-016-0270	7-11-2008	Adopt	8-1-2008
333-265-0050	6-16-2008	Amend	8-1-2008	340-016-0280	7-11-2008	Adopt	8-1-2008
333-265-0060	6-16-2008	Amend	8-1-2008	340-016-0290	7-11-2008	Adopt	8-1-2008
333-265-0070	6-16-2008	Amend	8-1-2008	340-016-0300	7-11-2008	Adopt	8-1-2008
333-265-0080	6-16-2008	Amend	8-1-2008	340-016-0310	7-11-2008	Adopt	8-1-2008
333-265-0090	6-16-2008	Amend	8-1-2008	340-016-0320	7-11-2008	Adopt	8-1-2008
333-265-0100	6-16-2008	Amend	8-1-2008	340-016-0330	7-11-2008	Adopt	8-1-2008
333-265-0110	6-16-2008	Amend	8-1-2008	340-016-0340	7-11-2008	Adopt	8-1-2008
333-265-0120	6-16-2008	Repeal	8-1-2008	340-041-0009	5-5-2008	Amend	6-1-2008
333-265-0130	6-16-2008	Repeal	8-1-2008	340-045-0075	7-1-2008	Amend	8-1-2008
333-265-0140	6-16-2008	Amend	8-1-2008	340-054-0035	2-27-2008	Amend	4-1-2008
333-265-0150	6-16-2008	Amend	8-1-2008	340-054-0060	2-27-2008	Amend	4-1-2008
333-265-0160	6-16-2008	Amend	8-1-2008	340-055-0005	5-5-2008	Amend	6-1-2008
333-265-0170	6-16-2008	Amend	8-1-2008	340-055-0007	5-5-2008	Amend	6-1-2008
333-265-0180	6-16-2008	Adopt	8-1-2008	340-055-0010	5-5-2008	Amend	6-1-2008
333-265-0190	6-16-2008	Adopt	8-1-2008	340-055-0013	5-5-2008	Amend	6-1-2008
333-520-0073	3-7-2008	Adopt	4-1-2008	340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
333-520-0110	7-1-2008	Amend	4-1-2008	340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
333-536-0005	1-1-2008	Amend	2-1-2008	340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
333-536-0010	1-1-2008	Amend	2-1-2008	340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
333-536-0015	1-1-2008	Amend	2-1-2008	340-055-0020	5-5-2008	Amend	6-1-2008
333-536-0020	1-1-2008	Amend	2-1-2008	340-055-0025	5-5-2008	Amend	6-1-2008
333-536-0030	1-1-2008	Amend	2-1-2008	340-055-0030	5-5-2008	Amend	6-1-2008
333-536-0040	1-1-2008	Amend	2-1-2008	340-071-0140	7-1-2008	Amend	8-1-2008
333-536-0050	1-1-2008	Amend	2-1-2008	340-071-0220	7-1-2008	Amend	8-1-2008
333-536-0070	1-1-2008	Amend	2-1-2008	340-122-0210	3-10-2008	Amend	4-1-2008
333-536-0075	1-1-2008	Amend	2-1-2008	340-122-0330	3-10-2008	Amend	4-1-2008
333-536-0080	1-1-2008	Amend	2-1-2008	340-150-0006	3-10-2008	Amend	4-1-2008
333-536-0085	1-1-2008	Amend	2-1-2008	340-150-0008	3-10-2008	Amend	4-1-2008
333-536-0090	1-1-2008	Amend	2-1-2008	340-150-0010	3-10-2008	Amend	4-1-2008
333-536-0095	1-1-2008	Amend	2-1-2008	340-150-0020	3-10-2008	Amend	4-1-2008
333-536-0100	1-1-2008	Repeal	2-1-2008	340-150-0021	3-10-2008	Amend	4-1-2008
333-536-0105	1-1-2008	Adopt	2-1-2008	340-150-0052	3-10-2008	Amend	4-1-2008

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340-150-0110	3-10-2008	Amend	4-1-2008	407-007-0010	3-31-2008	Adopt(T)	5-1-2008
340-150-0135	3-10-2008	Amend	4-1-2008	407-007-0020	3-31-2008	Adopt(T)	5-1-2008
340-150-0150	3-10-2008	Amend	4-1-2008	407-007-0030	3-31-2008	Adopt(T)	5-1-2008
340-150-0152	3-10-2008	Amend	4-1-2008	407-007-0040	3-31-2008	Adopt(T)	5-1-2008
340-150-0160	3-10-2008	Amend	4-1-2008	407-007-0050	3-31-2008	Adopt(T)	5-1-2008
340-150-0163	3-10-2008	Amend	4-1-2008	407-007-0060	3-31-2008	Adopt(T)	5-1-2008
340-150-0166	3-10-2008	Amend	4-1-2008	407-007-0070	3-31-2008	Adopt(T)	5-1-2008
340-150-0167	3-10-2008	Amend	4-1-2008	407-007-0080	3-31-2008	Adopt(T)	5-1-2008
340-150-0168	3-10-2008	Amend	4-1-2008	407-007-0090	3-31-2008	Adopt(T)	5-1-2008
340-150-0180	3-10-2008	Amend	4-1-2008	407-007-0100	5-22-2008	Adopt(T)	7-1-2008
340-150-0200	3-10-2008	Amend	4-1-2008	407-007-0210	3-31-2008	Amend(T)	5-1-2008
340-150-0210	3-10-2008	Adopt	4-1-2008	407-007-0270	3-31-2008	Amend(T)	5-1-2008
340-150-0250	3-10-2008	Amend	4-1-2008	407-007-0330	3-31-2008	Amend(T)	5-1-2008
340-150-0300	3-10-2008	Amend	4-1-2008	407-012-0005	12-1-2007	Adopt	1-1-2008
340-150-0310	3-10-2008	Amend	4-1-2008	407-012-0010	12-1-2007	Adopt	1-1-2008
340-150-0350	3-10-2008	Amend	4-1-2008	407-012-0015	12-1-2007	Adopt	1-1-2008
340-150-0352	3-10-2008	Amend	4-1-2008	407-012-0020	12-1-2007	Adopt	1-1-2008
340-150-0354	3-10-2008	Amend	4-1-2008	407-012-0025	12-1-2007	Adopt	1-1-2008
340-150-0360	3-10-2008	Amend	4-1-2008	407-014-0300	1-1-2008	Adopt	2-1-2008
340-150-0410	3-10-2008	Amend	4-1-2008	407-014-0305	1-1-2008	Adopt	2-1-2008
340-150-0430	3-10-2008	Amend	4-1-2008	407-014-0310	1-1-2008	Adopt	2-1-2008
340-150-0450	3-10-2008	Amend	4-1-2008	407-014-0315	1-1-2008	Adopt	2-1-2008
340-150-0455	3-10-2008	Amend	4-1-2008	407-014-0320	1-1-2008	Adopt	2-1-2008
340-150-0460	3-10-2008	Amend	4-1-2008	407-035-0000	7-1-2008	Adopt	8-1-2008
340-150-0465	3-10-2008	Amend	4-1-2008	407-035-0005	7-1-2008	Adopt	8-1-2008
340-150-0470	3-10-2008	Amend	4-1-2008	407-035-0010	7-1-2008	Adopt	8-1-2008
340-150-0510	3-10-2008	Amend	4-1-2008	407-035-0015	7-1-2008	Adopt	8-1-2008
340-150-0555	3-10-2008	Amend	4-1-2008	407-045-0800	12-3-2007	Adopt(T)	1-1-2008
340-150-0560	3-10-2008	Amend	4-1-2008	407-045-0800	5-30-2008	Adopt	7-1-2008
340-160-0030	3-10-2008	Amend	4-1-2008	407-045-0800(T)	5-30-2008	Repeal	7-1-2008
340-160-0150	3-10-2008	Amend	4-1-2008	407-045-0810	12-3-2007	Adopt(T)	1-1-2008
340-162-0005	3-10-2008	Amend	4-1-2008	407-045-0810	5-30-2008	Adopt	7-1-2008
340-162-0010	3-10-2008	Amend	4-1-2008	407-045-0810(T)	5-30-2008	Repeal	7-1-2008
340-162-0020	3-10-2008	Amend	4-1-2008	407-045-0820	12-3-2007	Adopt(T)	1-1-2008
340-162-0040	3-10-2008	Amend	4-1-2008	407-045-0820	5-30-2008	Adopt	7-1-2008
340-162-0054	3-10-2008	Repeal	4-1-2008	407-045-0820(T)	5-30-2008	Repeal	7-1-2008
340-162-0150	3-10-2008	Amend	4-1-2008	407-045-0830	12-3-2007	Adopt(T)	1-1-2008
340-200-0040	3-20-2008	Amend	5-1-2008	407-045-0830	5-30-2008	Adopt	7-1-2008
340-222-0020	3-6-2008	Amend(T)	4-1-2008	407-045-0830(T)	5-30-2008	Repeal	7-1-2008
340-248-0260	11-30-2007	Amend	1-1-2008	407-045-0840	12-3-2007	Adopt(T)	1-1-2008
340-259-0005	7-11-2008	Adopt	8-1-2008	407-045-0840(T)	5-30-2008	Repeal	7-1-2008
340-259-0010	7-11-2008	Adopt	8-1-2008	407-045-0850	12-3-2007	Adopt(T)	1-1-2008
340-259-0015	7-11-2008	Adopt	8-1-2008	407-045-0850	5-30-2008	Adopt	7-1-2008
340-259-0020	7-11-2008	Adopt	8-1-2008	407-045-0850(T)	5-30-2008	Repeal	7-1-2008
340-259-0025	7-11-2008	Adopt	8-1-2008	407-045-0860	12-3-2007	Adopt(T)	1-1-2008
340-259-0030	7-11-2008	Adopt	8-1-2008	407-045-0860	5-30-2008	Adopt	7-1-2008
340-259-0035	7-11-2008	Adopt	8-1-2008	407-045-0860(T)	5-30-2008	Repeal	7-1-2008
340-259-0040	7-11-2008	Adopt	8-1-2008	407-045-0870	12-3-2007	Adopt(T)	1-1-2008
340-259-0045	7-11-2008	Adopt	8-1-2008	407-045-0870	5-30-2008	Adopt	7-1-2008
340-259-0050	7-11-2008	Adopt	8-1-2008	407-045-0870(T)	5-30-2008	Repeal	7-1-2008
340-259-0055	7-11-2008	Adopt	8-1-2008	407-045-0880	12-3-2007	Adopt(T)	1-1-2008
340-259-0060	7-11-2008	Adopt	8-1-2008	407-045-0880	5-30-2008	Adopt	7-1-2008
340-259-0065	7-11-2008	Adopt	8-1-2008	407-045-0880(T)	5-30-2008	Repeal	7-1-2008
350-011-0003	4-1-2008	Amend	4-1-2008	407-045-0890	12-3-2007	Adopt(T)	1-1-2008
350-011-0011	4-1-2008	Adopt	4-1-2008	407-045-0890	5-30-2008	Adopt	7-1-2008
350-012-0007	4-1-2008	Amend	4-1-2008	407-045-0890(T)	5-30-2008	Repeal	7-1-2008
350-012-0008	4-1-2008	Amend	4-1-2008	407-045-0900	12-3-2007	Adopt(T)	1-1-2008
350-016-0009	4-1-2008	Amend	4-1-2008	407-045-0900	5-30-2008	Adopt	7-1-2008
407-005-0110	12-1-2007	Amend	1-1-2008	407-045-0900(T)	5-30-2008	Repeal	7-1-2008

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407-045-0910	5-30-2008	Adopt	7-1-2008	409-023-0015	7-1-2008	Adopt	8-1-2008
407-045-0910(T)	5-30-2008	Repeal	7-1-2008	409-023-0020	7-1-2008	Adopt	8-1-2008
407-045-0920	12-3-2007	Adopt(T)	1-1-2008	409-023-0025	7-1-2008	Adopt	8-1-2008
407-045-0920	5-30-2008	Adopt	7-1-2008	409-023-0030	7-1-2008	Adopt	8-1-2008
407-045-0920(T)	5-30-2008	Repeal	7-1-2008	409-023-0035	7-1-2008	Adopt	8-1-2008
407-045-0930	12-3-2007	Adopt(T)	1-1-2008	409-023-0100	7-1-2008	Adopt	8-1-2008
407-045-0930	5-30-2008	Adopt	7-1-2008	409-023-0105	7-1-2008	Adopt	8-1-2008
407-045-0930(T)	5-30-2008	Repeal	7-1-2008	410-001-0100	1-1-2008	Amend(T)	2-1-2008
407-045-0940	12-3-2007	Adopt(T)	1-1-2008	410-001-0100	2-1-2008	Am. & Ren.	3-1-2008
407-045-0940	5-30-2008	Adopt	7-1-2008	410-001-0100(T)	2-1-2008	Repeal	3-1-2008
407-045-0940(T)	5-30-2008	Repeal	7-1-2008	410-001-0110	1-1-2008	Amend(T)	2-1-2008
407-045-0950	12-3-2007	Adopt(T)	1-1-2008	410-001-0110	2-1-2008	Am. & Ren.	3-1-2008
407-045-0950	5-30-2008	Adopt	7-1-2008	410-001-0110(T)	2-1-2008	Repeal	3-1-2008
407-045-0950(T)	5-30-2008	Repeal	7-1-2008	410-001-0120	1-1-2008	Amend(T)	2-1-2008
407-045-0960	12-3-2007	Adopt(T)	1-1-2008	410-001-0120	2-1-2008	Am. & Ren.	3-1-2008
407-045-0960	5-30-2008	Adopt	7-1-2008	410-001-0120(T)	2-1-2008	Repeal	3-1-2008
407-045-0960(T)	5-30-2008	Repeal	7-1-2008	410-001-0130	1-1-2008	Amend(T)	2-1-2008
407-045-0970	12-3-2007	Adopt(T)	1-1-2008	410-001-0130	2-1-2008	Am. & Ren.	3-1-2008
407-045-0970	5-30-2008	Adopt	7-1-2008	410-001-0130(T)	2-1-2008	Repeal	3-1-2008
407-045-0970(T)	5-30-2008	Repeal	7-1-2008	410-001-0140	1-1-2008	Amend(T)	2-1-2008
407-045-0980	12-3-2007	Adopt(T)	1-1-2008	410-001-0140	2-1-2008	Am. & Ren.	3-1-2008
407-045-0980	5-30-2008	Adopt	7-1-2008	410-001-0140(T)	2-1-2008	Repeal	3-1-2008
407-045-0980(T)	5-30-2008	Repeal	7-1-2008	410-001-0150	1-1-2008	Amend(T)	2-1-2008
407-120-0112	1-1-2008	Adopt(T)	2-1-2008	410-001-0150	2-1-2008	Am. & Ren.	3-1-2008
407-120-0112	2-1-2008	Adopt	3-1-2008	410-001-0150(T)	2-1-2008	Repeal	3-1-2008
407-120-0112(T)	2-1-2008	Repeal	3-1-2008	410-001-0160	1-1-2008	Amend(T)	2-1-2008
407-120-0114	1-1-2008	Adopt(T)	2-1-2008	410-001-0160	2-1-2008	Am. & Ren.	3-1-2008
407-120-0114	2-1-2008	Adopt	3-1-2008	410-001-0160(T)	2-1-2008	Repeal	3-1-2008
407-120-0114(T)	2-1-2008	Repeal	3-1-2008	410-001-0170	1-1-2008	Amend(T)	2-1-2008
407-120-0116	1-1-2008	Adopt(T)	2-1-2008	410-001-0170	2-1-2008	Am. & Ren.	3-1-2008
407-120-0116	2-1-2008	Adopt	3-1-2008	410-001-0170(T)	2-1-2008	Repeal	3-1-2008
407-120-0116(T)	2-1-2008	Repeal	3-1-2008	410-001-0180	1-1-2008	Amend(T)	2-1-2008
407-120-0118	1-1-2008	Adopt(T)	2-1-2008	410-001-0180	2-1-2008	Am. & Ren.	3-1-2008
407-120-0118	2-1-2008	Adopt	3-1-2008	410-001-0180(T)	2-1-2008	Repeal	3-1-2008
407-120-0118(T)	2-1-2008	Repeal	3-1-2008	410-001-0190	1-1-2008	Amend(T)	2-1-2008
407-120-0165	1-1-2008	Adopt(T)	2-1-2008	410-001-0190	2-1-2008	Am. & Ren.	3-1-2008
407-120-0165	2-1-2008	Adopt	3-1-2008	410-001-0190(T)	2-1-2008	Repeal	3-1-2008
407-120-0165(T)	2-1-2008	Repeal	3-1-2008	410-001-0200	1-1-2008	Amend(T)	2-1-2008
407-120-0300	1-1-2008	Adopt	2-1-2008	410-001-0200	2-1-2008	Am. & Ren.	3-1-2008
407-120-0300	7-1-2008	Amend(T)	8-1-2008	410-001-0200(T)	2-1-2008	Repeal	3-1-2008
407-120-0310	1-1-2008	Adopt	2-1-2008	410-050-0100	1-25-2008	Amend	3-1-2008
407-120-0310	7-1-2008	Amend(T)	8-1-2008	410-050-0110	1-25-2008	Amend	3-1-2008
407-120-0320	1-1-2008	Adopt	2-1-2008	410-050-0120	1-25-2008	Amend	3-1-2008
407-120-0320	7-1-2008	Amend(T)	8-1-2008	410-050-0130	1-25-2008	Amend	3-1-2008
407-120-0325	7-1-2008	Adopt(T)	8-1-2008	410-050-0140	1-25-2008	Amend	3-1-2008
407-120-0330	1-1-2008	Adopt	2-1-2008	410-050-0150	1-25-2008	Amend	3-1-2008
407-120-0330	7-1-2008	Amend(T)	8-1-2008	410-050-0160	1-25-2008	Amend	3-1-2008
407-120-0340	1-1-2008	Adopt	2-1-2008	410-050-0170	1-25-2008	Amend	3-1-2008
407-120-0340	7-1-2008	Amend(T)	8-1-2008	410-050-0180	1-25-2008	Amend	3-1-2008
407-120-0350	1-1-2008	Adopt	2-1-2008	410-050-0190	1-25-2008	Amend	3-1-2008
407-120-0350	7-1-2008	Amend(T)	8-1-2008	410-050-0200	1-25-2008	Amend	3-1-2008
407-120-0360	1-1-2008	Adopt	2-1-2008	410-050-0210	1-25-2008	Amend	3-1-2008
407-120-0360	7-1-2008	Amend(T)	8-1-2008	410-050-0220	1-25-2008	Amend	3-1-2008
407-120-0370	1-1-2008	Adopt	2-1-2008	410-050-0230	1-25-2008	Amend	3-1-2008
407-120-0370	7-1-2008	Amend(T)	8-1-2008	410-050-0240	1-25-2008	Amend	3-1-2008
407-120-0380	1-1-2008	Adopt	2-1-2008	410-050-0250	1-25-2008	Amend	3-1-2008
407-120-0380	7-1-2008	Amend(T)	8-1-2008	410-050-0401	1-25-2008	Amend	3-1-2008
409-023-0000	7-1-2008	Adopt	8-1-2008	410-050-0411	1-25-2008	Amend	3-1-2008
409-023-0005	7-1-2008	Adopt	8-1-2008	410-050-0421	1-25-2008	Amend	3-1-2008

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410-050-0441	1-25-2008	Repeal	3-1-2008	410-121-0040	4-1-2008	Amend	5-1-2008
410-050-0451	1-25-2008	Amend	3-1-2008	410-121-0040	7-1-2008	Amend	7-1-2008
410-050-0461	1-25-2008	Amend	3-1-2008	410-121-0135	1-1-2008	Amend	1-1-2008
410-050-0471	1-25-2008	Amend	3-1-2008	410-121-0140	1-1-2008	Amend	1-1-2008
410-050-0481	1-25-2008	Amend	3-1-2008	410-121-0145	4-1-2008	Amend	5-1-2008
410-050-0491	1-25-2008	Amend	3-1-2008	410-121-0146	1-1-2008	Amend	1-1-2008
410-050-0501	1-25-2008	Amend	3-1-2008	410-121-0147	4-1-2008	Amend	5-1-2008
410-050-0511	1-25-2008	Amend	3-1-2008	410-121-0148	1-1-2008	Amend	1-1-2008
410-050-0521	1-25-2008	Amend	3-1-2008	410-121-0150	1-1-2008	Amend	1-1-2008
410-050-0531	1-25-2008	Amend	3-1-2008	410-121-0155	1-1-2008	Amend	1-1-2008
410-050-0541	1-25-2008	Amend	3-1-2008	410-121-0157	7-1-2008	Amend	7-1-2008
410-050-0551	1-25-2008	Amend	3-1-2008	410-121-0160	1-1-2008	Amend	1-1-2008
410-050-0561	1-25-2008	Amend	3-1-2008	410-121-0300	1-1-2008	Amend	1-1-2008
410-050-0571	1-25-2008	Repeal	3-1-2008	410-122-0020	7-1-2008	Amend	7-1-2008
410-050-0581	1-25-2008	Repeal	3-1-2008	410-122-0080	7-1-2008	Amend	7-1-2008
410-050-0591	1-25-2008	Amend	3-1-2008	410-122-0184	7-1-2008	Amend	7-1-2008
410-050-0601	1-25-2008	Adopt	3-1-2008	410-122-0186	7-1-2008	Amend	7-1-2008
410-050-0700	1-25-2008	Amend	3-1-2008	410-122-0202	1-1-2008	Amend	1-1-2008
410-050-0710	1-25-2008	Amend	3-1-2008	410-122-0202	7-1-2008	Amend	7-1-2008
410-050-0720	1-25-2008	Amend	3-1-2008	410-122-0203	1-1-2008	Amend	1-1-2008
410-050-0730	1-25-2008	Amend	3-1-2008	410-122-0250	7-1-2008	Amend	7-1-2008
410-050-0740	1-25-2008	Amend	3-1-2008	410-122-0300	7-1-2008	Amend	7-1-2008
410-050-0750	1-25-2008	Amend	3-1-2008	410-122-0320	1-1-2008	Amend	1-1-2008
410-050-0750	6-12-2008	Amend(T)	7-1-2008	410-122-0320	7-1-2008	Amend	7-1-2008
410-050-0760	1-25-2008	Amend	3-1-2008	410-122-0325	1-1-2008	Amend	1-1-2008
410-050-0770	1-25-2008	Amend	3-1-2008	410-122-0325	7-1-2008	Amend	7-1-2008
410-050-0780	1-25-2008	Amend	3-1-2008	410-122-0330	1-1-2008	Amend	1-1-2008
410-050-0790	1-25-2008	Amend	3-1-2008	410-122-0365	7-1-2008	Amend	7-1-2008
410-050-0800	1-25-2008	Amend	3-1-2008	410-122-0380	1-1-2008	Amend	1-1-2008
410-050-0810	1-25-2008	Amend	3-1-2008	410-122-0400	7-1-2008	Amend	7-1-2008
410-050-0820	1-25-2008	Amend	3-1-2008	410-122-0475	7-1-2008	Amend	7-1-2008
410-050-0830	1-25-2008	Amend	3-1-2008	410-122-0500	7-1-2008	Amend	7-1-2008
410-050-0840	1-25-2008	Amend	3-1-2008	410-122-0520	7-1-2008	Amend	7-1-2008
410-050-0850	1-25-2008	Amend	3-1-2008	410-122-0540	7-1-2008	Amend	7-1-2008
410-050-0860	1-25-2008	Amend	3-1-2008	410-122-0658	7-1-2008	Adopt	7-1-2008
410-050-0861	1-1-2008	Amend	2-1-2008	410-122-0660	7-1-2008	Amend	7-1-2008
410-050-0861	1-25-2008	Amend	3-1-2008	410-122-0662	1-1-2008	Adopt	1-1-2008
410-050-0870	1-25-2008	Amend	3-1-2008	410-122-0678	1-1-2008	Amend	1-1-2008
410-120-0000	1-1-2008	Amend	1-1-2008	410-122-0720	1-1-2008	Amend	1-1-2008
410-120-0010	12-5-2007	Adopt(T)	1-1-2008	410-122-0720	7-1-2008	Amend	7-1-2008
410-120-0025	3-14-2008	Amend(T)	4-1-2008	410-123-1000	1-1-2008	Amend	1-1-2008
410-120-0025	5-1-2008	Amend	6-1-2008	410-123-1000	7-1-2008	Amend	7-1-2008
410-120-0025(T)	5-1-2008	Repeal	6-1-2008	410-123-1040	1-1-2008	Repeal	1-1-2008
410-120-0030	4-1-2008	Adopt(T)	5-1-2008	410-123-1060	1-1-2008	Amend	1-1-2008
410-120-0030	7-1-2008	Amend	7-1-2008	410-123-1100	1-1-2008	Amend	1-1-2008
410-120-0030(T)	7-1-2008	Repeal	7-1-2008	410-123-1160	1-1-2008	Amend	1-1-2008
410-120-0035	7-1-2008	Adopt(T)	7-1-2008	410-123-1200	1-1-2008	Amend	1-1-2008
410-120-1200	1-1-2008	Amend	1-1-2008	410-123-1220	1-1-2008	Amend	1-1-2008
410-120-1200	7-1-2008	Amend	7-1-2008	410-123-1240	1-1-2008	Amend	1-1-2008
410-120-1230	3-1-2008	Amend	4-1-2008	410-123-1260	1-1-2008	Amend	1-1-2008
410-120-1295	1-1-2008	Amend	1-1-2008	410-123-1260	7-1-2008	Amend	7-1-2008
410-120-1320	1-1-2008	Amend	1-1-2008	410-123-1490	1-1-2008	Amend	1-1-2008
410-120-1340	1-1-2008	Amend	1-1-2008	410-123-1540	7-1-2008	Amend	7-1-2008
410-120-1397	1-1-2008	Amend	1-1-2008	410-123-1620	1-1-2008	Amend	1-1-2008
410-120-1560	1-1-2008	Amend	1-1-2008	410-123-1670	1-1-2008	Amend	1-1-2008
410-120-1570	1-1-2008	Amend	1-1-2008	410-123-1670	7-1-2008	Amend	7-1-2008
410-121-0021	7-1-2008	Amend	7-1-2008	410-125-0000	7-1-2008	Amend	7-1-2008
410-121-0030	7-1-2008	Amend	7-1-2008	410-125-0047	7-1-2008	Amend	7-1-2008
410-121-0032	7-1-2008	Amend	7-1-2008	410-125-0080	12-20-2007	Amend(T)	2-1-2008

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410-125-0080	7-1-2008	Amend	7-1-2008	410-146-0080	1-1-2008	Am. & Ren.	1-1-2008
410-125-0141	7-1-2008	Amend	7-1-2008	410-146-0080	1-1-2008	Amend	1-1-2008
410-125-0220	7-1-2008	Amend	7-1-2008	410-146-0100	1-1-2008	Amend	1-1-2008
410-125-0360	7-1-2008	Amend	7-1-2008	410-146-0120	1-1-2008	Amend	1-1-2008
410-125-0400	7-1-2008	Amend	7-1-2008	410-146-0130	1-1-2008	Amend	1-1-2008
410-125-0600	7-1-2008	Amend	7-1-2008	410-146-0140	1-1-2008	Amend	1-1-2008
410-125-0720	7-1-2008	Amend	7-1-2008	410-146-0160	1-1-2008	Amend	1-1-2008
410-127-0060	1-1-2008	Amend	1-1-2008	410-146-0180	1-1-2008	Repeal	1-1-2008
410-129-0070	1-1-2008	Amend	1-1-2008	410-146-0200	1-1-2008	Amend	1-1-2008
410-129-0200	1-1-2008	Amend	1-1-2008	410-146-0200	7-1-2008	Amend	7-1-2008
410-130-0000	7-1-2008	Amend	7-1-2008	410-146-0220	1-1-2008	Amend	1-1-2008
410-130-0180	7-1-2008	Amend	7-1-2008	410-146-0240	1-1-2008	Amend	1-1-2008
410-130-0190	7-1-2008	Amend	7-1-2008	410-146-0340	1-1-2008	Amend	1-1-2008
410-130-0200	12-20-2007	Amend(T)	2-1-2008	410-146-0380	1-1-2008	Amend	1-1-2008
410-130-0200	5-1-2008	Amend	6-1-2008	410-146-0380	7-1-2008	Amend	7-1-2008
410-130-0200	7-1-2008	Amend	7-1-2008	410-146-0400	1-1-2008	Repeal	1-1-2008
410-130-0220	7-1-2008	Amend	7-1-2008	410-146-0420	1-1-2008	Repeal	1-1-2008
410-130-0255	7-1-2008	Amend	7-1-2008	410-146-0440	1-1-2008	Amend	1-1-2008
410-130-0580	12-20-2007	Amend(T)	2-1-2008	410-146-0440	7-1-2008	Amend	7-1-2008
410-130-0580	5-1-2008	Amend	6-1-2008	410-146-0460	1-1-2008	Amend	1-1-2008
410-130-0610	4-1-2008	Amend(T)	5-1-2008	410-147-0040	7-1-2008	Amend	7-1-2008
410-130-0610	7-1-2008	Amend	7-1-2008	410-147-0080	7-1-2008	Amend	7-1-2008
410-130-0680	7-1-2008	Amend	7-1-2008	410-147-0125	7-1-2008	Amend	7-1-2008
410-133-0090	7-1-2008	Amend(T)	8-1-2008	410-147-0280	7-1-2008	Amend	7-1-2008
410-133-0100	7-1-2008	Amend(T)	8-1-2008	410-147-0320	7-1-2008	Amend	7-1-2008
410-133-0220	7-1-2008	Amend(T)	8-1-2008	410-147-0340	7-1-2008	Amend	7-1-2008
410-138-0080	7-1-2008	Amend(T)	8-1-2008	410-147-0360	7-1-2008	Amend	7-1-2008
410-138-0380	7-1-2008	Amend(T)	8-1-2008	410-147-0365	1-1-2008	Amend	1-1-2008
410-138-0560	7-1-2008	Amend(T)	8-1-2008	410-147-0460	7-1-2008	Amend	7-1-2008
410-138-0680	7-1-2008	Amend(T)	8-1-2008	410-148-0060	7-1-2008	Amend	7-1-2008
410-138-0740	7-1-2008	Amend(T)	8-1-2008	410-148-0140	7-1-2008	Amend	7-1-2008
410-138-0780	7-1-2008	Amend(T)	8-1-2008	411-027-0000	6-1-2008	Am. & Ren.	7-1-2008
410-140-0040	7-1-2008	Amend	7-1-2008	411-027-0005	6-1-2008	Adopt	7-1-2008
410-140-0050	7-1-2008	Amend	7-1-2008	411-027-0025	6-1-2008	Amend	7-1-2008
410-140-0160	7-1-2008	Amend	7-1-2008	411-027-0050	6-1-2008	Amend	7-1-2008
410-140-0260	7-1-2008	Amend	7-1-2008	411-027-0075	6-1-2008	Amend	7-1-2008
410-140-0320	7-1-2008	Amend	7-1-2008	411-027-0150	6-1-2008	Amend	7-1-2008
410-140-0400	7-1-2008	Amend	7-1-2008	411-027-0200	6-1-2008	Repeal	7-1-2008
410-141-0180	1-1-2008	Amend	1-1-2008	411-030-0020	4-1-2008	Amend(T)	5-1-2008
410-141-0260	7-1-2008	Amend	7-1-2008	411-030-0040	4-1-2008	Amend(T)	5-1-2008
410-141-0261	7-1-2008	Amend	7-1-2008	411-030-0050	4-1-2008	Amend(T)	5-1-2008
410-141-0262	7-1-2008	Amend	7-1-2008	411-030-0070	4-1-2008	Amend(T)	5-1-2008
410-141-0263	7-1-2008	Amend	7-1-2008	411-030-0100	4-1-2008	Adopt(T)	5-1-2008
410-141-0264	7-1-2008	Amend	7-1-2008	411-031-0040	4-29-2008	Amend	6-1-2008
410-141-0265	7-1-2008	Amend	7-1-2008	411-031-0040(T)	4-29-2008	Repeal	6-1-2008
410-141-0480	1-1-2008	Amend	1-1-2008	411-036-0000	4-1-2008	Suspend	5-1-2008
410-141-0520	12-20-2007	Amend(T)	2-1-2008	411-036-0010	4-1-2008	Suspend	5-1-2008
410-141-0520	3-27-2008	Amend	5-1-2008	411-036-0020	4-1-2008	Suspend	5-1-2008
410-141-0520	4-1-2008	Amend(T)	5-1-2008	411-036-0030	4-1-2008	Suspend	5-1-2008
410-141-0520	7-1-2008	Amend	7-1-2008	411-036-0040	4-1-2008	Suspend	5-1-2008
410-141-0520(T)	12-20-2007	Suspend	2-1-2008	411-036-0045	4-1-2008	Suspend	5-1-2008
410-142-0020	1-1-2008	Amend	1-1-2008	411-036-0050	4-1-2008	Suspend	5-1-2008
410-146-0000	1-1-2008	Amend	1-1-2008	411-036-0060	4-1-2008	Suspend	5-1-2008
410-146-0020	1-1-2008	Amend	1-1-2008	411-036-0070	4-1-2008	Suspend	5-1-2008
410-146-0021	1-1-2008	Amend	1-1-2008	411-036-0080	4-1-2008	Suspend	5-1-2008
410-146-0025	1-1-2008	Repeal	1-1-2008	411-036-0090	4-1-2008	Suspend	5-1-2008
410-146-0040	1-1-2008	Amend	1-1-2008	411-036-0100	4-1-2008	Suspend	5-1-2008
410-146-0060	1-1-2008	Amend	1-1-2008	411-036-0110	4-1-2008	Suspend	5-1-2008
410-146-0075	1-1-2008	Amend	1-1-2008	411-036-0120	4-1-2008	Suspend	5-1-2008

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411-036-0140	4-1-2008	Suspend	5-1-2008	411-340-0090	6-29-2008	Amend	8-1-2008
411-048-0000	7-1-2008	Amend(T)	8-1-2008	411-340-0100	6-29-2008	Amend	8-1-2008
411-048-0010	7-1-2008	Amend(T)	8-1-2008	411-340-0110	6-29-2008	Amend	8-1-2008
411-048-0020	7-1-2008	Amend(T)	8-1-2008	411-340-0120	6-29-2008	Amend	8-1-2008
411-048-0030	7-1-2008	Amend(T)	8-1-2008	411-340-0130	1-1-2008	Amend(T)	2-1-2008
411-048-0040	7-1-2008	Amend(T)	8-1-2008	411-340-0130	6-29-2008	Amend	8-1-2008
411-048-0050	7-1-2008	Amend(T)	8-1-2008	411-340-0130(T)	6-29-2008	Repeal	8-1-2008
411-048-0060	7-1-2008	Amend(T)	8-1-2008	411-340-0140	6-29-2008	Amend	8-1-2008
411-048-0070	7-1-2008	Amend(T)	8-1-2008	411-340-0150	1-1-2008	Amend(T)	2-1-2008
411-048-0080	7-1-2008	Amend(T)	8-1-2008	411-340-0150	6-29-2008	Amend	8-1-2008
411-048-0100	7-1-2008	Amend(T)	8-1-2008	411-340-0150(T)	6-29-2008	Repeal	8-1-2008
411-048-0120	7-1-2008	Amend(T)	8-1-2008	411-340-0160	6-29-2008	Amend	8-1-2008
411-048-0130	7-1-2008	Amend(T)	8-1-2008	411-340-0170	1-1-2008	Amend(T)	2-1-2008
411-070-0005	3-1-2008	Amend	4-1-2008	411-340-0170	6-29-2008	Amend	8-1-2008
411-070-0005(T)	3-1-2008	Repeal	4-1-2008	411-340-0170(T)	6-29-2008	Repeal	8-1-2008
411-070-0027	3-1-2008	Amend	4-1-2008	411-340-0180	6-29-2008	Amend	8-1-2008
411-070-0027(T)	3-1-2008	Repeal	4-1-2008	411-355-0000	4-15-2008	Adopt(T)	5-1-2008
411-070-0035	3-1-2008	Amend	4-1-2008	411-355-0010	4-15-2008	Adopt(T)	5-1-2008
411-070-0035(T)	3-1-2008	Repeal	4-1-2008	411-355-0020	4-15-2008	Adopt(T)	5-1-2008
411-070-0045	3-1-2008	Amend	4-1-2008	411-355-0030	4-15-2008	Adopt(T)	5-1-2008
411-070-0085	3-1-2008	Amend	4-1-2008	411-355-0040	4-15-2008	Adopt(T)	5-1-2008
411-070-0085(T)	3-1-2008	Repeal	4-1-2008	411-355-0050	4-15-2008	Adopt(T)	5-1-2008
411-070-0091	3-1-2008	Amend	4-1-2008	411-355-0060	4-15-2008	Adopt(T)	5-1-2008
411-070-0091(T)	3-1-2008	Repeal	4-1-2008	411-355-0070	4-15-2008	Adopt(T)	5-1-2008
411-070-0095	3-1-2008	Amend	4-1-2008	411-355-0080	4-15-2008	Adopt(T)	5-1-2008
411-070-0095(T)	3-1-2008	Repeal	4-1-2008	411-355-0090	4-15-2008	Adopt(T)	5-1-2008
411-070-0359	3-1-2008	Amend	4-1-2008	411-355-0100	4-15-2008	Adopt(T)	5-1-2008
411-070-0359(T)	3-1-2008	Repeal	4-1-2008	411-355-0110	4-15-2008	Adopt(T)	5-1-2008
411-070-0428	3-1-2008	Repeal	4-1-2008	411-355-0120	4-15-2008	Adopt(T)	5-1-2008
411-070-0442	3-1-2008	Amend	4-1-2008	413-010-0400	12-1-2007	Amend	1-1-2008
411-070-0442(T)	3-1-2008	Repeal	4-1-2008	413-010-0410	12-1-2007	Amend	1-1-2008
411-070-0452	3-1-2008	Amend	4-1-2008	413-010-0420	12-1-2007	Amend	1-1-2008
411-070-0452(T)	3-1-2008	Repeal	4-1-2008	413-010-0430	12-1-2007	Amend	1-1-2008
411-070-0462	3-1-2008	Repeal	4-1-2008	413-010-0440	12-1-2007	Amend	1-1-2008
411-070-0465	3-1-2008	Amend	4-1-2008	413-010-0450	12-1-2007	Repeal	1-1-2008
411-070-0465(T)	3-1-2008	Repeal	4-1-2008	413-010-0460	12-1-2007	Repeal	1-1-2008
411-085-0005	3-1-2008	Amend(T)	3-1-2008	413-010-0470	12-1-2007	Repeal	1-1-2008
411-085-0200	3-6-2008	Amend	4-1-2008	413-010-0480	12-1-2007	Amend	1-1-2008
411-085-0310	3-6-2008	Amend	4-1-2008	413-010-0490	12-1-2007	Repeal	1-1-2008
411-086-0100	3-1-2008	Amend(T)	3-1-2008	413-015-0100	12-3-2007	Amend(T)	1-1-2008
411-086-0200	3-6-2008	Amend	4-1-2008	413-015-0100	4-1-2008	Amend	5-1-2008
411-088-0070	3-6-2008	Amend	4-1-2008	413-015-0110	4-1-2008	Amend	5-1-2008
411-330-0020	12-28-2007	Amend	2-1-2008	413-015-0115	12-3-2007	Amend(T)	1-1-2008
411-330-0020(T)	12-28-2007	Repeal	2-1-2008	413-015-0115	1-1-2008	Amend(T)	2-1-2008
411-330-0030	12-28-2007	Amend	2-1-2008	413-015-0115	4-1-2008	Amend	5-1-2008
411-330-0030(T)	12-28-2007	Repeal	2-1-2008	413-015-0115(T)	12-3-2007	Suspend	1-1-2008
411-340-0010	6-29-2008	Amend	8-1-2008	413-015-0115(T)	1-1-2008	Suspend	2-1-2008
411-340-0020	1-1-2008	Amend(T)	2-1-2008	413-015-0205	12-3-2007	Amend(T)	1-1-2008
411-340-0020	6-29-2008	Amend	8-1-2008	413-015-0205	1-1-2008	Amend(T)	2-1-2008
411-340-0020(T)	6-29-2008	Repeal	8-1-2008	413-015-0205	4-1-2008	Amend	5-1-2008
411-340-0030	6-29-2008	Amend	8-1-2008	413-015-0205	6-28-2008	Amend(T)	8-1-2008
411-340-0040	6-29-2008	Amend	8-1-2008	413-015-0205(T)	1-1-2008	Suspend	2-1-2008
411-340-0050	6-29-2008	Amend	8-1-2008	413-015-0210	1-1-2008	Amend(T)	2-1-2008
411-340-0060	1-1-2008	Amend(T)	2-1-2008	413-015-0210	6-28-2008	Amend	8-1-2008
411-340-0060	6-29-2008	Amend	8-1-2008	413-015-0211	1-1-2008	Amend(T)	2-1-2008
411-340-0060(T)	6-29-2008	Repeal	8-1-2008	413-015-0211	6-28-2008	Amend	8-1-2008
411-340-0070	1-1-2008	Amend(T)	2-1-2008	413-015-0212	1-1-2008	Amend(T)	2-1-2008
411-340-0070	6-29-2008	Amend	8-1-2008	413-015-0212	6-28-2008	Amend	8-1-2008
411-340-0070(T)	6-29-2008	Repeal	8-1-2008	413-015-0215	1-1-2008	Amend(T)	2-1-2008

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413-015-0215	6-28-2008	Amend	8-1-2008	413-070-0810	1-1-2008	Amend(T)	2-1-2008
413-015-0220	1-1-2008	Amend(T)	2-1-2008	413-070-0810	6-28-2008	Amend	8-1-2008
413-015-0220	6-28-2008	Amend	8-1-2008	413-070-0830	6-28-2008	Amend	8-1-2008
413-015-0405	1-1-2008	Amend(T)	2-1-2008	413-070-0855	6-28-2008	Amend	8-1-2008
413-015-0405	6-28-2008	Amend	8-1-2008	413-070-0860	1-1-2008	Amend(T)	2-1-2008
413-015-0409	6-28-2008	Amend(T)	8-1-2008	413-070-0860	6-28-2008	Amend	8-1-2008
413-015-0415	1-1-2008	Amend(T)	2-1-2008	413-070-0870	6-28-2008	Amend	8-1-2008
413-015-0415	4-1-2008	Amend	5-1-2008	413-070-0880	1-1-2008	Amend(T)	2-1-2008
413-015-0415	6-28-2008	Amend(T)	8-1-2008	413-070-0880	6-28-2008	Amend	8-1-2008
413-015-0415(T)	1-1-2008	Suspend	2-1-2008	413-090-0010	1-1-2008	Amend(T)	2-1-2008
413-015-0420	4-1-2008	Amend	5-1-2008	413-090-0010	6-28-2008	Amend	8-1-2008
413-015-0520	1-1-2008	Adopt(T)	2-1-2008	413-100-0020	6-28-2008	Amend(T)	8-1-2008
413-015-0520	6-28-2008	Adopt	8-1-2008	413-100-0040	1-1-2008	Suspend	2-1-2008
413-015-0525	1-1-2008	Adopt(T)	2-1-2008	413-100-0040	6-28-2008	Repeal	8-1-2008
413-015-0525	6-28-2008	Adopt	8-1-2008	413-100-0900	1-1-2008	Adopt(T)	2-1-2008
413-015-0530	1-1-2008	Adopt(T)	2-1-2008	413-100-0900	6-28-2008	Adopt	8-1-2008
413-015-0530	6-28-2008	Adopt	8-1-2008	413-100-0905	1-1-2008	Adopt(T)	2-1-2008
413-015-0535	1-1-2008	Adopt(T)	2-1-2008	413-100-0905	6-28-2008	Adopt	8-1-2008
413-015-0535	6-28-2008	Adopt	8-1-2008	413-100-0910	1-1-2008	Adopt(T)	2-1-2008
413-015-0540	1-1-2008	Adopt(T)	2-1-2008	413-100-0910	6-28-2008	Adopt	8-1-2008
413-015-0540	6-28-2008	Adopt	8-1-2008	413-100-0915	1-1-2008	Adopt(T)	2-1-2008
413-015-0545	1-1-2008	Adopt(T)	2-1-2008	413-100-0915	6-28-2008	Adopt	8-1-2008
413-015-0545	6-28-2008	Adopt	8-1-2008	413-100-0920	1-1-2008	Adopt(T)	2-1-2008
413-015-0550	1-1-2008	Adopt(T)	2-1-2008	413-100-0920	6-28-2008	Adopt	8-1-2008
413-015-0550	6-28-2008	Adopt	8-1-2008	413-100-0925	1-1-2008	Adopt(T)	2-1-2008
413-015-0555	1-1-2008	Adopt(T)	2-1-2008	413-100-0925	6-28-2008	Adopt	8-1-2008
413-015-0555	6-28-2008	Adopt	8-1-2008	413-100-0930	1-1-2008	Adopt(T)	2-1-2008
413-015-0560	1-1-2008	Adopt(T)	2-1-2008	413-100-0930	6-28-2008	Adopt	8-1-2008
413-015-0560	6-28-2008	Adopt	8-1-2008	413-100-0935	1-1-2008	Adopt(T)	2-1-2008
413-015-0565	1-1-2008	Adopt(T)	2-1-2008	413-100-0935	6-28-2008	Adopt	8-1-2008
413-015-0565	6-28-2008	Adopt	8-1-2008	413-100-0940	1-1-2008	Adopt(T)	2-1-2008
413-015-1000	1-1-2008	Amend(T)	2-1-2008	413-100-0940	6-28-2008	Adopt	8-1-2008
413-015-1000	6-28-2008	Amend	8-1-2008	413-120-0060	12-12-2007	Amend(T)	1-1-2008
413-050-0200	4-1-2008	Amend	5-1-2008	413-120-0060	6-1-2008	Amend	7-1-2008
413-050-0200(T)	4-1-2008	Repeal	5-1-2008	413-120-0060(T)	6-1-2008	Repeal	7-1-2008
413-050-0210	4-1-2008	Amend	5-1-2008	413-120-0400	1-1-2008	Amend(T)	2-1-2008
413-050-0210(T)	4-1-2008	Repeal	5-1-2008	413-120-0400	5-15-2008	Amend	6-1-2008
413-050-0220	4-1-2008	Amend	5-1-2008	413-120-0400(T)	5-15-2008	Repeal	6-1-2008
413-050-0220(T)	4-1-2008	Repeal	5-1-2008	413-120-0410	1-1-2008	Amend(T)	2-1-2008
413-050-0230	4-1-2008	Amend	5-1-2008	413-120-0410	5-15-2008	Amend	6-1-2008
413-050-0230(T)	4-1-2008	Repeal	5-1-2008	413-120-0410(T)	5-15-2008	Repeal	6-1-2008
413-050-0235	4-1-2008	Adopt	5-1-2008	413-120-0420	1-1-2008	Amend(T)	2-1-2008
413-050-0235(T)	4-1-2008	Repeal	5-1-2008	413-120-0420	5-15-2008	Amend	6-1-2008
413-050-0240	4-1-2008	Repeal	5-1-2008	413-120-0420(T)	5-15-2008	Repeal	6-1-2008
413-050-0250	4-1-2008	Repeal	5-1-2008	413-120-0430	1-1-2008	Suspend	2-1-2008
413-050-0260	4-1-2008	Repeal	5-1-2008	413-120-0430	5-15-2008	Repeal	6-1-2008
413-050-0270	4-1-2008	Repeal	5-1-2008	413-120-0440	1-1-2008	Amend(T)	2-1-2008
413-050-0280	4-1-2008	Amend	5-1-2008	413-120-0440	5-15-2008	Amend	6-1-2008
413-050-0280(T)	4-1-2008	Repeal	5-1-2008	413-120-0440(T)	5-15-2008	Repeal	6-1-2008
413-050-0290	4-1-2008	Repeal	5-1-2008	413-120-0450	1-1-2008	Amend(T)	2-1-2008
413-050-0300	4-1-2008	Repeal	5-1-2008	413-120-0450	5-15-2008	Amend	6-1-2008
413-070-0600	1-1-2008	Amend(T)	2-1-2008	413-120-0450(T)	5-15-2008	Repeal	6-1-2008
413-070-0600	6-28-2008	Amend	8-1-2008	413-120-0455	1-1-2008	Amend(T)	2-1-2008
413-070-0620	1-1-2008	Amend(T)	2-1-2008	413-120-0455	5-15-2008	Amend	6-1-2008
413-070-0620	6-28-2008	Amend	8-1-2008	413-120-0455(T)	5-15-2008	Repeal	6-1-2008
413-070-0625	1-1-2008	Amend(T)	2-1-2008	413-120-0460	1-1-2008	Amend(T)	2-1-2008
413-070-0625	6-28-2008	Amend	8-1-2008	413-120-0460	5-15-2008	Amend	6-1-2008
413-070-0640	1-1-2008	Amend(T)	2-1-2008	413-120-0460(T)	5-15-2008	Repeal	6-1-2008
413-070-0640	6-28-2008	Amend	8-1-2008	413-120-0470	1-1-2008	Amend(T)	2-1-2008
413-070-0800	6-28-2008	Amend	8-1-2008	413-120-0470	5-15-2008	Amend	6-1-2008

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413-130-0000	7-1-2008	Amend	8-1-2008	436-009-0020	7-7-2008	Amend(T)	8-1-2008
413-130-0005	7-1-2008	Amend	8-1-2008	436-009-0022	7-7-2008	Amend(T)	8-1-2008
413-130-0010	7-1-2008	Amend	8-1-2008	436-009-0030	7-1-2008	Amend	7-1-2008
413-130-0020	7-1-2008	Amend	8-1-2008	436-009-0030	7-7-2008	Amend(T)	8-1-2008
413-130-0030	7-1-2008	Amend	8-1-2008	436-009-0040	7-1-2008	Amend	7-1-2008
413-130-0040	7-1-2008	Amend	8-1-2008	436-009-0040	7-7-2008	Amend(T)	8-1-2008
413-130-0050	7-1-2008	Amend	8-1-2008	436-009-0070	7-1-2008	Amend	7-1-2008
413-130-0060	7-1-2008	Amend	8-1-2008	436-009-0090	7-1-2008	Amend	7-1-2008
413-130-0070	7-1-2008	Amend	8-1-2008	436-009-0090	7-7-2008	Amend(T)	8-1-2008
413-130-0075	7-1-2008	Amend	8-1-2008	436-010-0008	6-30-2008	Amend	7-1-2008
413-130-0080	7-1-2008	Amend	8-1-2008	436-010-0210	1-2-2008	Amend(T)	1-1-2008
413-130-0090	7-1-2008	Amend	8-1-2008	436-010-0210	6-30-2008	Amend	7-1-2008
413-130-0100	7-1-2008	Amend	8-1-2008	436-010-0220	1-2-2008	Amend(T)	1-1-2008
413-130-0110	7-1-2008	Amend	8-1-2008	436-010-0220	6-30-2008	Amend	7-1-2008
413-130-0115	7-1-2008	Amend	8-1-2008	436-010-0230	6-30-2008	Amend	7-1-2008
413-130-0120	7-1-2008	Amend	8-1-2008	436-010-0240	6-30-2008	Amend	7-1-2008
413-130-0125	7-1-2008	Amend	8-1-2008	436-010-0280	1-2-2008	Amend(T)	1-1-2008
413-130-0127	7-1-2008	Amend	8-1-2008	436-010-0280	6-30-2008	Amend	7-1-2008
413-130-0130	7-1-2008	Amend	8-1-2008	436-010-0330	6-30-2008	Amend	7-1-2008
413-200-0210	1-1-2008	Amend(T)	2-1-2008	436-015-0005	7-1-2008	Amend	7-1-2008
413-200-0210	6-28-2008	Amend	8-1-2008	436-015-0009	7-1-2008	Amend	7-1-2008
413-200-0220	1-1-2008	Amend(T)	2-1-2008	436-015-0010	7-1-2008	Amend	7-1-2008
413-200-0220	6-28-2008	Amend	8-1-2008	436-015-0020	7-1-2008	Amend	7-1-2008
413-200-0404	1-1-2008	Adopt(T)	2-1-2008	436-015-0030	7-1-2008	Amend	7-1-2008
413-200-0404	6-28-2008	Adopt	8-1-2008	436-015-0040	7-1-2008	Amend	7-1-2008
413-200-0409	1-1-2008	Adopt(T)	2-1-2008	436-015-0110	7-1-2008	Amend	7-1-2008
413-200-0409	6-28-2008	Adopt	8-1-2008	436-030-0003	7-1-2008	Amend	7-1-2008
413-200-0414	1-1-2008	Adopt(T)	2-1-2008	436-035-0500	12-28-2007	Amend(T)	2-1-2008
413-200-0414	6-28-2008	Adopt	8-1-2008	436-040-0003	7-1-2008	Amend	7-1-2008
413-200-0419	1-1-2008	Adopt(T)	2-1-2008	436-040-0100	7-1-2008	Repeal	7-1-2008
413-200-0419	6-28-2008	Adopt	8-1-2008	436-045-0003	7-1-2008	Amend	7-1-2008
413-200-0424	1-1-2008	Adopt(T)	2-1-2008	436-050-0002	7-1-2008	Amend	7-1-2008
413-200-0424	6-28-2008	Adopt	8-1-2008	436-050-0003	7-1-2008	Amend	7-1-2008
415-010-0005	12-5-2007	Adopt(T)	1-1-2008	436-050-0005	7-1-2008	Amend	7-1-2008
415-010-0005	2-12-2008	Suspend	3-1-2008	436-050-0008	7-1-2008	Amend	7-1-2008
415-051-0045	12-11-2007	Amend	1-1-2008	436-050-0025	7-1-2008	Adopt	7-1-2008
416-001-0005	6-9-2008	Amend	7-1-2008	436-050-0045	7-1-2008	Amend	7-1-2008
423-010-0023	5-30-2008	Amend(T)	7-1-2008	436-050-0050	7-1-2008	Amend	7-1-2008
423-010-0024	4-16-2008	Amend	6-1-2008	436-050-0100	7-1-2008	Amend	7-1-2008
436-001-0003	7-1-2008	Amend	7-1-2008	436-050-0110	7-1-2008	Amend	7-1-2008
436-001-0004	7-1-2008	Amend	7-1-2008	436-050-0120	7-1-2008	Amend	7-1-2008
436-001-0005	7-1-2008	Amend	7-1-2008	436-050-0170	7-1-2008	Amend	7-1-2008
436-001-0009	7-1-2008	Amend	7-1-2008	436-050-0175	7-1-2008	Amend	7-1-2008
436-001-0019	7-1-2008	Amend	7-1-2008	436-050-0190	7-1-2008	Amend	7-1-2008
436-001-0023	7-1-2008	Amend	7-1-2008	436-050-0200	7-1-2008	Amend	7-1-2008
436-001-0027	7-1-2008	Amend	7-1-2008	436-050-0210	7-1-2008	Amend	7-1-2008
436-001-0030	7-1-2008	Amend	7-1-2008	436-050-0220	7-1-2008	Amend	7-1-2008
436-001-0170	7-1-2008	Amend	7-1-2008	436-110-0240	7-1-2008	Amend	7-1-2008
436-001-0240	7-1-2008	Amend	7-1-2008	436-110-0320	7-1-2008	Amend	7-1-2008
436-001-0246	7-1-2008	Amend	7-1-2008	436-110-0330	7-1-2008	Amend	7-1-2008
436-001-0252	7-1-2008	Amend	7-1-2008	436-160-0020	7-1-2008	Amend	7-1-2008
436-001-0265	7-1-2008	Amend	7-1-2008	436-160-0070	7-1-2008	Amend	7-1-2008
436-001-0296	7-1-2008	Amend	7-1-2008	436-160-0090	7-1-2008	Amend	7-1-2008
436-001-0300	7-1-2008	Amend	7-1-2008	436-160-0330	7-1-2008	Amend	7-1-2008
436-009-0003	7-7-2008	Amend(T)	8-1-2008	436-160-0340	7-1-2008	Amend	7-1-2008
436-009-0004	7-1-2008	Amend	7-1-2008	436-160-0350	7-1-2008	Amend	7-1-2008
436-009-0008	7-1-2008	Amend	7-1-2008	436-160-0360	7-1-2008	Amend	7-1-2008
436-009-0010	7-1-2008	Amend	7-1-2008	436-160-0410	7-1-2008	Amend	7-1-2008
436-009-0015	7-1-2008	Amend	7-1-2008	436-160-0430	7-1-2008	Amend	7-1-2008

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437-001-0005	7-14-2008	Amend	8-1-2008	438-015-0005	1-1-2008	Amend	1-1-2008
437-001-0015	3-1-2008	Amend	4-1-2008	438-015-0019	1-1-2008	Adopt	1-1-2008
437-001-0205	1-1-2008	Amend	1-1-2008	438-015-0022	1-1-2008	Adopt	1-1-2008
437-001-0215	1-1-2008	Amend	1-1-2008	438-015-0080	1-1-2008	Amend	1-1-2008
437-001-0220	1-1-2008	Amend	1-1-2008	438-019-0030	1-1-2008	Amend	1-1-2008
437-001-0240	1-1-2008	Amend	1-1-2008	441-325-0010	6-26-2008	Amend	8-1-2008
437-001-0255	1-1-2008	Amend	1-1-2008	441-325-0020	6-26-2008	Amend	8-1-2008
437-001-0295	12-3-2007	Amend	1-1-2008	441-325-0030	6-26-2008	Amend	8-1-2008
437-001-0700	1-1-2008	Amend	2-1-2008	441-325-0040	6-26-2008	Amend	8-1-2008
437-001-0700	7-14-2008	Amend	8-1-2008	441-325-0050	6-26-2008	Amend	8-1-2008
437-001-0706	1-1-2008	Adopt	2-1-2008	441-500-0020	1-28-2008	Amend	3-1-2008
437-001-0706	7-14-2008	Amend	8-1-2008	441-500-0030	1-28-2008	Amend	3-1-2008
437-001-0740	1-1-2008	Amend	2-1-2008	441-505-3045	4-18-2008	Adopt(T)	6-1-2008
437-002-0005	5-30-2008	Amend	7-1-2008	441-710-0500	1-28-2008	Amend	3-1-2008
437-002-0060	5-30-2008	Amend	7-1-2008	441-720-0385	4-18-2008	Adopt(T)	6-1-2008
437-002-0080	5-30-2008	Amend	7-1-2008	441-730-0000	12-27-2007	Amend	1-1-2008
437-002-0100	12-3-2007	Amend	1-1-2008	441-730-0010	12-27-2007	Amend	1-1-2008
437-002-0100	5-30-2008	Amend	7-1-2008	441-730-0015	12-27-2007	Amend	1-1-2008
437-002-0120	5-15-2008	Amend	6-1-2008	441-730-0030	1-28-2008	Amend	3-1-2008
437-002-0122	12-3-2007	Adopt	1-1-2008	441-730-0245	4-18-2008	Adopt(T)	6-1-2008
437-002-0140	5-30-2008	Amend	7-1-2008	441-730-0270	12-27-2007	Amend	1-1-2008
437-002-0142	5-1-2008	Amend	5-1-2008	441-730-0275	12-27-2007	Amend	1-1-2008
437-002-0260	5-30-2008	Amend	7-1-2008	441-730-0310	12-27-2007	Amend	1-1-2008
437-002-0280	5-30-2008	Amend	7-1-2008	441-755-0000	11-30-2007	Adopt	1-1-2008
437-002-0382	7-1-2008	Amend	6-1-2008	441-755-0010	11-30-2007	Adopt	1-1-2008
437-003-0001	5-15-2008	Amend	6-1-2008	441-755-0100	11-30-2007	Adopt	1-1-2008
437-003-1000	7-1-2008	Amend	6-1-2008	441-755-0110	11-30-2007	Adopt	1-1-2008
437-004-1005	5-15-2008	Amend	6-1-2008	441-755-0120	11-30-2007	Adopt	1-1-2008
437-004-1120	5-1-2008	Amend	5-1-2008	441-755-0130	11-30-2007	Adopt	1-1-2008
437-004-2230	5-30-2008	Amend	7-1-2008	441-755-0140	11-30-2007	Adopt	1-1-2008
437-005-0001	5-15-2008	Amend	6-1-2008	441-755-0150	11-30-2007	Adopt	1-1-2008
437-005-0002	5-15-2008	Amend	6-1-2008	441-755-0160	11-30-2007	Adopt	1-1-2008
437-005-0003	5-15-2008	Amend	6-1-2008	441-755-0170	11-30-2007	Adopt	1-1-2008
437-007-0010	7-1-2008	Amend	4-1-2008	441-755-0200	11-30-2007	Adopt	1-1-2008
437-007-0025	7-1-2008	Amend	4-1-2008	441-755-0210	11-30-2007	Adopt	1-1-2008
437-007-0685	7-1-2008	Repeal	4-1-2008	441-755-0220	11-30-2007	Adopt	1-1-2008
437-007-0775	3-5-2008	Amend	4-1-2008	441-755-0300	11-30-2007	Adopt	1-1-2008
437-007-0780	3-5-2008	Amend	4-1-2008	441-755-0310	11-30-2007	Adopt	1-1-2008
437-007-1500	7-1-2008	Adopt	4-1-2008	441-850-0040	4-18-2008	Adopt(T)	6-1-2008
437-007-1505	7-1-2008	Adopt	4-1-2008	441-860-0010	5-7-2008	Amend	6-1-2008
437-007-1510	7-1-2008	Adopt	4-1-2008	441-865-0022	5-7-2008	Adopt(T)	6-1-2008
437-007-1520	7-1-2008	Adopt	4-1-2008	441-865-0022	6-26-2008	Suspend	8-1-2008
437-007-1525	7-1-2008	Adopt	4-1-2008	441-865-0024	6-26-2008	Adopt(T)	8-1-2008
437-007-1530	7-1-2008	Adopt	4-1-2008	441-870-0030	5-7-2008	Amend	6-1-2008
437-007-1535	7-1-2008	Adopt	4-1-2008	441-870-0080	5-7-2008	Adopt	6-1-2008
438-005-0046	1-1-2008	Amend	1-1-2008	442-005-0250	5-19-2008	Amend(T)	7-1-2008
438-005-0050	1-1-2008	Amend	1-1-2008	442-005-0270	3-31-2008	Amend(T)	5-1-2008
438-005-0055	1-1-2008	Amend	1-1-2008	443-002-0010	1-2-2008	Amend	2-1-2008
438-006-0020	1-1-2008	Amend	1-1-2008	443-002-0010	7-1-2008	Amend(T)	8-1-2008
438-006-0100	1-1-2008	Amend	1-1-2008	443-002-0030	1-2-2008	Amend(T)	2-1-2008
438-009-0005	1-1-2008	Amend	1-1-2008	443-002-0030	4-15-2008	Amend	5-1-2008
438-009-0010	1-1-2008	Amend	1-1-2008	443-002-0030	6-10-2008	Amend(T)	7-1-2008
438-009-0020	1-1-2008	Amend	1-1-2008	443-002-0060	1-2-2008	Amend	2-1-2008
438-009-0022	1-1-2008	Amend	1-1-2008	443-002-0060	7-1-2008	Amend(T)	8-1-2008
438-009-0025	1-1-2008	Amend	1-1-2008	443-002-0070	1-2-2008	Amend	2-1-2008
438-009-0028	1-1-2008	Amend	1-1-2008	443-002-0095	1-2-2008	Repeal	2-1-2008
438-009-0030	1-1-2008	Amend	1-1-2008	443-002-0100	1-2-2008	Amend	2-1-2008
438-009-0035	1-1-2008	Amend	1-1-2008	459-001-0005	4-4-2008	Amend	5-1-2008
438-011-0020	1-1-2008	Amend	1-1-2008	459-001-0030	4-2-2008	Amend	5-1-2008

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459-001-0035	4-2-2008	Amend	5-1-2008	461-110-0530	7-1-2008	Amend	8-1-2008
459-001-0040	4-2-2008	Amend	5-1-2008	461-110-0630	3-1-2008	Amend	4-1-2008
459-005-0591	5-21-2008	Amend(T)	7-1-2008	461-110-0630	7-1-2008	Amend	8-1-2008
459-005-0595	5-21-2008	Amend(T)	7-1-2008	461-110-0630(T)	3-1-2008	Repeal	4-1-2008
459-007-0110	11-23-2007	Amend	1-1-2008	461-115-0030	3-1-2008	Amend	4-1-2008
459-007-0160	11-23-2007	Adopt	1-1-2008	461-115-0030	4-17-2008	Amend(T)	6-1-2008
459-007-0290	11-23-2007	Amend	1-1-2008	461-115-0030	7-1-2008	Amend	8-1-2008
459-007-0530	11-23-2007	Amend	1-1-2008	461-115-0030(T)	3-1-2008	Repeal	4-1-2008
459-009-0084	11-23-2007	Amend	1-1-2008	461-115-0050	1-28-2008	Amend(T)	3-1-2008
459-009-0085	11-23-2007	Amend	1-1-2008	461-115-0050	7-1-2008	Amend	8-1-2008
459-009-0090	11-23-2007	Amend	1-1-2008	461-115-0190	3-1-2008	Amend	4-1-2008
459-009-0130	4-2-2008	Amend	5-1-2008	461-115-0190(T)	3-1-2008	Repeal	4-1-2008
459-010-0003	11-23-2007	Amend	1-1-2008	461-115-0430	3-1-2008	Amend	4-1-2008
459-010-0014	11-23-2007	Amend	1-1-2008	461-115-0430(T)	3-1-2008	Repeal	4-1-2008
459-010-0014	4-2-2008	Amend(T)	5-1-2008	461-115-0610	4-1-2008	Amend	5-1-2008
459-010-0014	5-21-2008	Amend	7-1-2008	461-115-0651	7-1-2008	Amend	8-1-2008
459-010-0035	11-23-2007	Amend	1-1-2008	461-115-0700	1-1-2008	Amend	2-1-2008
459-010-0042	4-2-2008	Amend(T)	5-1-2008	461-115-0705	4-1-2008	Amend	5-1-2008
459-010-0042	5-21-2008	Amend	7-1-2008	461-115-0715	3-1-2008	Adopt	4-1-2008
459-010-0055	11-23-2007	Amend	1-1-2008	461-115-0715(T)	3-1-2008	Repeal	4-1-2008
459-011-0050	11-23-2007	Amend	1-1-2008	461-120-0120	1-30-2008	Amend(T)	3-1-2008
459-013-0110	11-23-2007	Amend	1-1-2008	461-120-0120	7-1-2008	Amend	8-1-2008
459-015-0055	4-2-2008	Amend	5-1-2008	461-120-0120(T)	7-1-2008	Repeal	8-1-2008
459-017-0060	11-23-2007	Amend	1-1-2008	461-120-0125	1-30-2008	Amend(T)	3-1-2008
459-045-0030	11-23-2007	Amend	1-1-2008	461-120-0125	2-22-2008	Amend(T)	4-1-2008
459-050-0040	4-2-2008	Amend	5-1-2008	461-120-0125	7-1-2008	Amend	8-1-2008
459-050-0080	11-23-2007	Amend	1-1-2008	461-120-0125(T)	7-1-2008	Repeal	8-1-2008
459-050-0090	5-21-2008	Amend(T)	7-1-2008	461-120-0310	12-1-2007	Amend(T)	1-1-2008
459-050-0220	11-23-2007	Amend	1-1-2008	461-120-0310	3-1-2008	Amend	4-1-2008
459-070-0001	11-23-2007	Amend	1-1-2008	461-120-0310(T)	12-1-2007	Suspend	1-1-2008
459-075-0010	11-23-2007	Amend	1-1-2008	461-120-0310(T)	3-1-2008	Repeal	4-1-2008
459-075-0020	11-23-2007	Adopt	1-1-2008	461-120-0330	7-1-2008	Amend	8-1-2008
459-075-0150	11-23-2007	Amend	1-1-2008	461-120-0340	3-1-2008	Amend	4-1-2008
459-080-0020	11-23-2007	Adopt	1-1-2008	461-120-0340(T)	3-1-2008	Repeal	4-1-2008
459-080-0250	11-23-2007	Amend	1-1-2008	461-120-0345	3-1-2008	Amend	4-1-2008
461-001-0000	1-1-2008	Amend	2-1-2008	461-120-0345(T)	3-1-2008	Repeal	4-1-2008
461-001-0000	1-1-2008	Amend(T)	2-1-2008	461-120-0510	7-1-2008	Amend	8-1-2008
461-001-0000	3-1-2008	Amend	4-1-2008	461-125-0130	3-1-2008	Amend	4-1-2008
461-001-0000	4-1-2008	Amend	5-1-2008	461-125-0130(T)	3-1-2008	Repeal	4-1-2008
461-001-0000	7-1-2008	Amend	8-1-2008	461-125-0260	3-1-2008	Adopt	4-1-2008
461-001-0000(T)	1-1-2008	Repeal	2-1-2008	461-125-0260(T)	3-1-2008	Repeal	4-1-2008
461-001-0000(T)	3-1-2008	Repeal	4-1-2008	461-125-0310	4-1-2008	Amend	5-1-2008
461-001-0025	3-1-2008	Amend	4-1-2008	461-125-0810	3-1-2008	Amend	4-1-2008
461-001-0025(T)	3-1-2008	Repeal	4-1-2008	461-125-0810(T)	3-1-2008	Repeal	4-1-2008
461-001-0035	1-1-2008	Amend	2-1-2008	461-130-0305	3-1-2008	Amend	4-1-2008
461-006-0452	4-1-2008	Am. & Ren.	5-1-2008	461-130-0305(T)	3-1-2008	Repeal	4-1-2008
461-025-0310	3-1-2008	Amend	4-1-2008	461-130-0310	3-1-2008	Amend	4-1-2008
461-025-0310	4-1-2008	Amend	5-1-2008	461-130-0310(T)	3-1-2008	Repeal	4-1-2008
461-025-0310	7-1-2008	Amend	8-1-2008	461-130-0315	3-1-2008	Amend	4-1-2008
461-025-0310(T)	3-1-2008	Repeal	4-1-2008	461-130-0315(T)	3-1-2008	Repeal	4-1-2008
461-025-0311	7-1-2008	Amend	8-1-2008	461-130-0323	3-1-2008	Adopt	4-1-2008
461-025-0350	1-1-2008	Amend(T)	2-1-2008	461-130-0323(T)	3-1-2008	Repeal	4-1-2008
461-025-0350	4-1-2008	Amend	5-1-2008	461-130-0325	3-1-2008	Amend	4-1-2008
461-025-0350(T)	4-1-2008	Repeal	5-1-2008	461-130-0325	7-1-2008	Amend	8-1-2008
461-025-0375	7-1-2008	Amend	8-1-2008	461-130-0325(T)	3-1-2008	Repeal	4-1-2008
461-101-0010	3-1-2008	Amend	4-1-2008	461-130-0327	3-1-2008	Amend	4-1-2008
461-101-0010(T)	3-1-2008	Repeal	4-1-2008	461-130-0327(T)	3-1-2008	Repeal	4-1-2008
461-105-0010	3-1-2008	Amend	4-1-2008	461-130-0330	3-1-2008	Amend	4-1-2008
461-105-0010(T)	3-1-2008	Repeal	4-1-2008	461-130-0330(T)	3-1-2008	Repeal	4-1-2008

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461-130-0335(T)	3-1-2008	Repeal	4-1-2008	461-135-1250	3-1-2008	Adopt	4-1-2008
461-135-0010	3-1-2008	Amend	4-1-2008	461-135-1250(T)	3-1-2008	Repeal	4-1-2008
461-135-0010	7-1-2008	Amend	8-1-2008	461-140-0010	7-1-2008	Amend	8-1-2008
461-135-0010(T)	3-1-2008	Repeal	4-1-2008	461-140-0040	4-1-2008	Amend	5-1-2008
461-135-0070	3-1-2008	Amend	4-1-2008	461-140-0040	7-1-2008	Amend	8-1-2008
461-135-0070(T)	3-1-2008	Repeal	4-1-2008	461-140-0220	1-1-2008	Amend	2-1-2008
461-135-0075	3-1-2008	Amend	4-1-2008	461-140-0220	7-1-2008	Amend	8-1-2008
461-135-0075(T)	3-1-2008	Repeal	4-1-2008	461-140-0242	7-1-2008	Amend	8-1-2008
461-135-0082	1-30-2008	Amend(T)	3-1-2008	461-145-0020	7-1-2008	Amend	8-1-2008
461-135-0082	2-22-2008	Amend(T)	4-1-2008	461-145-0022	7-1-2008	Amend	8-1-2008
461-135-0082	7-1-2008	Amend	8-1-2008	461-145-0030	1-1-2008	Amend	2-1-2008
461-135-0082(T)	7-1-2008	Repeal	8-1-2008	461-145-0080	3-1-2008	Amend	4-1-2008
461-135-0085	3-1-2008	Amend	4-1-2008	461-145-0080	3-21-2008	Amend(T)	5-1-2008
461-135-0085(T)	3-1-2008	Repeal	4-1-2008	461-145-0080	7-1-2008	Amend	8-1-2008
461-135-0089	3-1-2008	Amend	4-1-2008	461-145-0080(T)	3-1-2008	Repeal	4-1-2008
461-135-0089(T)	3-1-2008	Repeal	4-1-2008	461-145-0080(T)	7-1-2008	Repeal	8-1-2008
461-135-0200	3-1-2008	Amend	4-1-2008	461-145-0090	7-1-2008	Amend	8-1-2008
461-135-0200(T)	3-1-2008	Repeal	4-1-2008	461-145-0108	1-1-2008	Amend	2-1-2008
461-135-0400	7-1-2008	Amend	8-1-2008	461-145-0120	4-1-2008	Amend	5-1-2008
461-135-0475	3-1-2008	Amend	4-1-2008	461-145-0180	1-1-2008	Repeal	2-1-2008
461-135-0475(T)	3-1-2008	Repeal	4-1-2008	461-145-0220	1-1-2008	Amend	2-1-2008
461-135-0493	12-17-2007	Amend(T)	2-1-2008	461-145-0261	7-1-2008	Adopt	8-1-2008
461-135-0505	3-1-2008	Amend	4-1-2008	461-145-0310	7-1-2008	Amend	8-1-2008
461-135-0505(T)	3-1-2008	Repeal	4-1-2008	461-145-0370	4-1-2008	Amend	5-1-2008
461-135-0506	3-1-2008	Amend	4-1-2008	461-145-0410	3-1-2008	Amend	4-1-2008
461-135-0506(T)	3-1-2008	Repeal	4-1-2008	461-145-0410(T)	3-1-2008	Repeal	4-1-2008
461-135-0507	7-1-2008	Adopt(T)	8-1-2008	461-145-0450(T)	4-1-2008	Repeal	5-1-2008
461-135-0570	7-1-2008	Amend	8-1-2008	461-145-0470	4-1-2008	Amend	5-1-2008
461-135-0725	1-1-2008	Amend	2-1-2008	461-145-0490	4-1-2008	Amend	5-1-2008
461-135-0730	7-1-2008	Amend(T)	8-1-2008	461-145-0490	7-1-2008	Amend	8-1-2008
461-135-0750	4-7-2008	Amend(T)	5-1-2008	461-145-0500	4-1-2008	Amend	5-1-2008
461-135-0750	7-1-2008	Amend	8-1-2008	461-145-0505	4-1-2008	Amend	5-1-2008
461-135-0750(T)	7-1-2008	Repeal	8-1-2008	461-145-0510	7-1-2008	Amend	8-1-2008
461-135-0780	1-1-2008	Amend	2-1-2008	461-145-0520	4-1-2008	Amend	5-1-2008
461-135-0780	7-1-2008	Amend	8-1-2008	461-145-0530	4-1-2008	Amend	5-1-2008
461-135-0811	7-1-2008	Repeal	8-1-2008	461-145-0530	4-1-2008	Amend(T)	5-1-2008
461-135-0832	10-1-2008	Amend	8-1-2008	461-145-0550	4-1-2008	Amend	5-1-2008
461-135-0835	1-1-2008	Amend	2-1-2008	461-145-0560	7-1-2008	Amend	8-1-2008
461-135-0835	10-1-2008	Amend	8-1-2008	461-145-0580	1-1-2008	Amend	2-1-2008
461-135-0875	7-1-2008	Amend	8-1-2008	461-145-0582	7-1-2008	Amend	8-1-2008
461-135-0900	1-30-2008	Amend(T)	3-1-2008	461-145-0585	4-1-2008	Amend	5-1-2008
461-135-0900	2-22-2008	Amend(T)	4-1-2008	461-145-0910	4-1-2008	Amend	5-1-2008
461-135-0900	7-1-2008	Amend	8-1-2008	461-150-0047	1-1-2008	Amend	2-1-2008
461-135-0900(T)	7-1-2008	Repeal	8-1-2008	461-155-0150	3-1-2008	Amend	4-1-2008
461-135-0910	4-1-2008	Amend	5-1-2008	461-155-0150(T)	3-1-2008	Repeal	4-1-2008
461-135-1100	6-1-2008	Amend(T)	7-1-2008	461-155-0180	1-24-2008	Amend(T)	3-1-2008
461-135-1100	7-1-2008	Amend	8-1-2008	461-155-0180	7-1-2008	Amend	8-1-2008
461-135-1102	1-28-2008	Amend(T)	3-1-2008	461-155-0235	1-24-2008	Amend(T)	3-1-2008
461-135-1102	6-1-2008	Amend(T)	7-1-2008	461-155-0235	7-1-2008	Amend	8-1-2008
461-135-1102	7-1-2008	Amend	8-1-2008	461-155-0250	1-1-2008	Amend	2-1-2008
461-135-1102(T)	6-1-2008	Suspend	7-1-2008	461-155-0250	3-1-2008	Amend(T)	4-1-2008
461-135-1110	7-1-2008	Amend	8-1-2008	461-155-0250	7-1-2008	Amend	8-1-2008
461-135-1125	1-28-2008	Adopt(T)	3-1-2008	461-155-0250(T)	7-1-2008	Repeal	8-1-2008
461-135-1125	4-17-2008	Amend(T)	6-1-2008	461-155-0270	1-1-2008	Amend	2-1-2008
461-135-1125	7-1-2008	Adopt	8-1-2008	461-155-0270	7-1-2008	Amend	8-1-2008
461-135-1125(T)	4-17-2008	Suspend	6-1-2008	461-155-0290	3-1-2008	Amend(T)	4-1-2008
461-135-1175	4-1-2008	Amend	5-1-2008	461-155-0290	4-1-2008	Amend	5-1-2008
461-135-1175	7-1-2008	Amend	8-1-2008	461-155-0290(T)	4-1-2008	Repeal	5-1-2008
461-135-1185(T)	3-1-2008	Repeal	4-1-2008	461-155-0291	3-1-2008	Amend(T)	4-1-2008

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461-155-0291(T)	4-1-2008	Repeal	5-1-2008	461-180-0040	7-1-2008	Amend	8-1-2008
461-155-0295	3-1-2008	Amend(T)	4-1-2008	461-180-0070	3-1-2008	Amend	4-1-2008
461-155-0295	4-1-2008	Amend	5-1-2008	461-180-0070(T)	3-1-2008	Repeal	4-1-2008
461-155-0295(T)	4-1-2008	Repeal	5-1-2008	461-180-0081	3-1-2008	Amend	4-1-2008
461-155-0300	1-1-2008	Amend	2-1-2008	461-180-0081(T)	3-1-2008	Repeal	4-1-2008
461-155-0320	1-1-2008	Amend(T)	2-1-2008	461-180-0085	1-1-2008	Amend	2-1-2008
461-155-0320	3-1-2008	Adopt	4-1-2008	461-190-0051	3-1-2008	Amend	4-1-2008
461-155-0320(T)	3-1-2008	Repeal	4-1-2008	461-190-0151(T)	3-1-2008	Repeal	4-1-2008
461-155-0500	7-1-2008	Amend	8-1-2008	461-190-0163	3-1-2008	Amend	4-1-2008
461-155-0650	7-1-2008	Repeal	8-1-2008	461-190-0163(T)	3-1-2008	Repeal	4-1-2008
461-155-0670	3-1-2008	Amend	4-1-2008	461-190-0171	3-1-2008	Amend	4-1-2008
461-155-0670(T)	3-1-2008	Repeal	4-1-2008	461-190-0171(T)	3-1-2008	Repeal	4-1-2008
461-155-0690	7-1-2008	Repeal	8-1-2008	461-190-0201	10-1-2007	Suspend	2-1-2008
461-160-0010	7-1-2008	Amend	8-1-2008	461-190-0201	3-1-2008	Repeal	4-1-2008
461-160-0030	4-1-2008	Amend	5-1-2008	461-190-0211	3-1-2008	Amend	4-1-2008
461-160-0040	1-1-2008	Amend	2-1-2008	461-190-0211(T)	3-1-2008	Repeal	4-1-2008
461-160-0055	1-1-2008	Amend	2-1-2008	461-190-0231	3-1-2008	Amend	4-1-2008
461-160-0410	1-1-2008	Amend	2-1-2008	461-190-0231(T)	3-1-2008	Repeal	4-1-2008
461-160-0415	1-1-2008	Amend	2-1-2008	461-190-0241	3-1-2008	Amend	4-1-2008
461-160-0430	3-1-2008	Amend	4-1-2008	461-190-0241(T)	3-1-2008	Repeal	4-1-2008
461-160-0430(T)	3-1-2008	Repeal	4-1-2008	461-190-0426	4-1-2008	Amend	5-1-2008
461-160-0550	1-1-2008	Amend	2-1-2008	461-195-0501	1-1-2008	Amend	2-1-2008
461-160-0550	7-1-2008	Amend	8-1-2008	461-195-0501	1-1-2008	Amend(T)	2-1-2008
461-160-0551	7-1-2008	Adopt	8-1-2008	461-195-0501	3-1-2008	Amend	4-1-2008
461-160-0580	1-1-2008	Amend	2-1-2008	461-195-0501(T)	1-1-2008	Repeal	2-1-2008
461-160-0620	1-1-2008	Amend	2-1-2008	461-195-0501(T)	3-1-2008	Repeal	4-1-2008
461-160-0620	7-1-2008	Amend	8-1-2008	461-195-0511	1-1-2008	Amend	2-1-2008
461-160-0800	3-1-2008	Amend(T)	4-1-2008	461-195-0521	1-1-2008	Amend	2-1-2008
461-160-0800	7-1-2008	Amend	8-1-2008	461-195-0521	4-1-2008	Amend	5-1-2008
461-160-0800(T)	7-1-2008	Repeal	8-1-2008	461-195-0551	1-1-2008	Amend	2-1-2008
461-160-0810	3-1-2008	Suspend	4-1-2008	461-195-0551	1-1-2008	Amend(T)	2-1-2008
461-160-0810	7-1-2008	Repeal	8-1-2008	461-195-0551	3-1-2008	Amend	4-1-2008
461-160-0820	3-1-2008	Suspend	4-1-2008	461-195-0551(T)	1-1-2008	Repeal	2-1-2008
461-160-0820	7-1-2008	Repeal	8-1-2008	461-195-0551(T)	3-1-2008	Repeal	4-1-2008
461-160-0850	3-1-2008	Suspend	4-1-2008	461-195-0561	3-1-2008	Amend	4-1-2008
461-160-0850	7-1-2008	Repeal	8-1-2008	461-195-0561(T)	3-1-2008	Repeal	4-1-2008
461-160-0855	1-1-2008	Adopt	2-1-2008	461-195-0601	3-1-2008	Amend	4-1-2008
461-165-0030	3-1-2008	Amend	4-1-2008	461-195-0601(T)	3-1-2008	Repeal	4-1-2008
461-165-0030(T)	3-1-2008	Repeal	4-1-2008	462-160-0110	11-28-2007	Amend(T)	1-1-2008
461-165-0190	7-1-2008	Amend	8-1-2008	462-160-0110	4-7-2008	Amend	5-1-2008
461-170-0020	3-1-2008	Amend	4-1-2008	462-160-0120	11-28-2007	Amend(T)	1-1-2008
461-170-0020(T)	3-1-2008	Repeal	4-1-2008	462-160-0120	4-7-2008	Amend	5-1-2008
461-170-0030	3-1-2008	Amend	4-1-2008	462-160-0130	11-28-2007	Amend(T)	1-1-2008
461-170-0030(T)	3-1-2008	Repeal	4-1-2008	462-160-0130	4-7-2008	Amend	5-1-2008
461-170-0130	1-1-2008	Amend	2-1-2008	462-200-0630	12-6-2007	Repeal	1-1-2008
461-175-0050	4-1-2008	Amend	5-1-2008	471-010-0020	4-29-2008	Amend	6-1-2008
461-175-0200	1-1-2008	Amend(T)	2-1-2008	471-010-0050	1-7-2008	Suspend	2-1-2008
461-175-0200	4-1-2008	Amend	5-1-2008	471-010-0050	7-1-2008	Repeal	7-1-2008
461-175-0200	4-7-2008	Amend(T)	5-1-2008	471-010-0051	1-7-2008	Suspend	2-1-2008
461-175-0200	7-1-2008	Amend	8-1-2008	471-010-0051	7-1-2008	Repeal	7-1-2008
461-175-0200(T)	4-1-2008	Repeal	5-1-2008	471-010-0052	1-7-2008	Suspend	2-1-2008
461-175-0200(T)	7-1-2008	Repeal	8-1-2008	471-010-0052	7-1-2008	Repeal	7-1-2008
461-175-0270	1-1-2008	Amend	2-1-2008	471-010-0054	1-7-2008	Suspend	2-1-2008
461-175-0340	1-1-2008	Amend(T)	2-1-2008	471-010-0054	7-1-2008	Repeal	7-1-2008
461-175-0340	4-1-2008	Amend	5-1-2008	471-010-0055	1-7-2008	Suspend	2-1-2008
461-175-0340(T)	4-1-2008	Repeal	5-1-2008	471-010-0055	7-1-2008	Repeal	7-1-2008
461-180-0010	3-1-2008	Amend	4-1-2008	471-010-0057	1-7-2008	Suspend	2-1-2008
461-180-0010(T)	3-1-2008	Repeal	4-1-2008	471-010-0057	7-1-2008	Repeal	7-1-2008
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471-010-0085	2-26-2008	Adopt(T)	4-1-2008	575-095-0030	1-9-2008	Adopt	2-1-2008
471-010-0085	7-1-2008	Adopt	7-1-2008	575-095-0035	1-9-2008	Adopt	2-1-2008
471-010-0090	2-26-2008	Adopt(T)	4-1-2008	575-095-0040	1-9-2008	Adopt	2-1-2008
471-010-0090	7-1-2008	Adopt	7-1-2008	575-095-0045	1-9-2008	Adopt	2-1-2008
471-010-0100	2-26-2008	Adopt(T)	4-1-2008	576-004-0000	7-1-2008	Amend	8-1-2008
471-010-0100	7-1-2008	Adopt	7-1-2008	576-004-0005	7-1-2008	Amend	8-1-2008
471-010-0105	2-26-2008	Adopt(T)	4-1-2008	576-004-0015	7-1-2008	Amend	8-1-2008
471-010-0105	7-1-2008	Adopt	7-1-2008	576-004-0020	7-1-2008	Amend	8-1-2008
471-010-0110	2-26-2008	Adopt(T)	4-1-2008	576-008-0200	2-19-2008	Suspend	4-1-2008
471-010-0110	7-1-2008	Adopt	7-1-2008	576-008-0205	2-19-2008	Suspend	4-1-2008
471-010-0115	2-26-2008	Adopt(T)	4-1-2008	576-008-0210	2-19-2008	Suspend	4-1-2008
471-010-0115	7-1-2008	Adopt	7-1-2008	576-008-0215	2-19-2008	Suspend	4-1-2008
471-010-0120	2-26-2008	Adopt(T)	4-1-2008	576-008-0220	2-19-2008	Suspend	4-1-2008
471-010-0120	7-1-2008	Adopt	7-1-2008	576-008-0223	2-19-2008	Suspend	4-1-2008
471-010-0125	2-26-2008	Adopt(T)	4-1-2008	576-008-0225	2-19-2008	Suspend	4-1-2008
471-010-0125	7-1-2008	Adopt	7-1-2008	576-008-0228	2-19-2008	Suspend	4-1-2008
471-030-0050	12-3-2007	Amend	1-1-2008	576-008-0230	2-19-2008	Suspend	4-1-2008
471-030-0052	2-15-2008	Amend(T)	3-1-2008	576-008-0235	2-19-2008	Suspend	4-1-2008
471-030-0052	7-1-2008	Amend	7-1-2008	576-008-0240	2-19-2008	Suspend	4-1-2008
471-030-0215	4-24-2008	Adopt(T)	6-1-2008	576-008-0245	2-19-2008	Suspend	4-1-2008
471-030-0215	8-1-2008	Adopt	8-1-2008	576-008-0255	2-19-2008	Suspend	4-1-2008
471-041-0060	1-8-2008	Amend	2-1-2008	576-008-0260	2-19-2008	Suspend	4-1-2008
543-001-0005	1-17-2008	Amend	3-1-2008	576-008-0275	2-19-2008	Suspend	4-1-2008
571-040-0010	2-19-2008	Suspend	4-1-2008	576-008-0277	2-19-2008	Suspend	4-1-2008
571-040-0015	2-19-2008	Suspend	4-1-2008	576-008-0280	2-19-2008	Suspend	4-1-2008
571-040-0020	2-19-2008	Suspend	4-1-2008	576-008-0282	2-19-2008	Suspend	4-1-2008
571-040-0030	2-19-2008	Suspend	4-1-2008	576-008-0285	2-19-2008	Suspend	4-1-2008
571-040-0040	2-19-2008	Suspend	4-1-2008	576-008-0287	2-19-2008	Suspend	4-1-2008
571-040-0050	2-19-2008	Suspend	4-1-2008	576-008-0290	2-19-2008	Suspend	4-1-2008
571-040-0060	2-19-2008	Suspend	4-1-2008	576-008-0292	2-19-2008	Suspend	4-1-2008
571-040-0070	2-19-2008	Suspend	4-1-2008	576-008-0295	2-19-2008	Suspend	4-1-2008
571-040-0080	2-19-2008	Suspend	4-1-2008	576-010-0000	7-1-2008	Amend	8-1-2008
571-040-0100	2-19-2008	Suspend	4-1-2008	576-010-0011	7-1-2008	Adopt	8-1-2008
571-040-0201	2-19-2008	Suspend	4-1-2008	576-010-0021	7-1-2008	Adopt	8-1-2008
571-040-0251	2-19-2008	Suspend	4-1-2008	576-024-0000	7-1-2008	Amend	8-1-2008
571-040-0261	2-19-2008	Suspend	4-1-2008	576-060-0010	7-1-2008	Amend	8-1-2008
571-040-0380	2-19-2008	Suspend	4-1-2008	576-060-0015	7-1-2008	Amend	8-1-2008
571-040-0382	2-19-2008	Suspend	4-1-2008	576-060-0020	7-1-2008	Amend	8-1-2008
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571-040-0410	2-19-2008	Suspend	4-1-2008	576-060-0035	7-1-2008	Amend	8-1-2008
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571-040-0440	2-19-2008	Suspend	4-1-2008	576-060-0039	7-1-2008	Amend	8-1-2008
571-040-0450	2-19-2008	Suspend	4-1-2008	576-060-0040	7-1-2008	Amend	8-1-2008
571-040-0460	2-19-2008	Suspend	4-1-2008	577-001-0001	4-21-2008	Suspend	5-1-2008
571-050-0011	6-18-2008	Amend(T)	8-1-2008	577-001-0005	4-21-2008	Amend(T)	5-1-2008
571-060-0005	7-1-2008	Amend	6-1-2008	577-001-0010	4-21-2008	Amend(T)	5-1-2008
571-060-0005	7-1-2008	Amend	8-1-2008	577-001-0014	4-21-2008	Suspend	5-1-2008
573-035-0040	3-14-2008	Amend	4-1-2008	577-001-0015	4-21-2008	Suspend	5-1-2008
573-040-0005	4-15-2008	Amend	5-1-2008	577-001-0020	4-21-2008	Amend(T)	5-1-2008
573-050-0045	6-5-2008	Amend	7-1-2008	577-001-0025	4-21-2008	Amend(T)	5-1-2008
573-075-0100	3-14-2008	Amend	4-1-2008	577-001-0030	4-21-2008	Suspend	5-1-2008
573-095-0010	3-14-2008	Amend	4-1-2008	577-001-0035	4-21-2008	Amend(T)	5-1-2008
574-050-0005	2-1-2008	Amend	3-1-2008	577-001-0040	4-21-2008	Amend(T)	5-1-2008
575-095-0005	1-9-2008	Adopt	2-1-2008	577-001-0041	4-21-2008	Amend(T)	5-1-2008
575-095-0010	1-9-2008	Adopt	2-1-2008	577-001-0045	4-21-2008	Amend(T)	5-1-2008
575-095-0015	1-9-2008	Adopt	2-1-2008	577-001-0050	4-21-2008	Amend(T)	5-1-2008
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577-030-0015	5-1-2008	Amend(T)	5-1-2008	580-040-0215	2-19-2008	Suspend	4-1-2008
577-030-0016	5-1-2008	Adopt(T)	5-1-2008	580-040-0220	2-19-2008	Suspend	4-1-2008
577-030-0020	5-1-2008	Amend(T)	5-1-2008	580-040-0223	2-19-2008	Suspend	4-1-2008
577-030-0021	5-1-2008	Adopt(T)	5-1-2008	580-040-0225	2-19-2008	Suspend	4-1-2008
577-030-0025	5-1-2008	Amend(T)	5-1-2008	580-040-0230	2-19-2008	Suspend	4-1-2008
577-030-0030	5-1-2008	Amend(T)	5-1-2008	580-040-0235	2-19-2008	Suspend	4-1-2008
577-030-0035	1-1-2008	Amend(T)	2-1-2008	580-040-0240	2-19-2008	Suspend	4-1-2008
577-030-0040	5-1-2008	Amend(T)	5-1-2008	580-040-0245	2-19-2008	Suspend	4-1-2008
577-030-0045	5-1-2008	Amend(T)	5-1-2008	580-040-0255	2-19-2008	Suspend	4-1-2008
577-030-0050	5-1-2008	Amend(T)	5-1-2008	580-040-0260	2-19-2008	Suspend	4-1-2008
577-030-0060	5-1-2008	Amend(T)	5-1-2008	580-040-0275	2-19-2008	Suspend	4-1-2008
577-030-0065	5-1-2008	Amend(T)	5-1-2008	580-040-0277	2-19-2008	Suspend	4-1-2008
577-030-0070	5-1-2008	Amend(T)	5-1-2008	580-040-0280	2-19-2008	Suspend	4-1-2008
577-030-0075	5-1-2008	Suspend	5-1-2008	580-040-0285	2-19-2008	Suspend	4-1-2008
577-030-0080	5-1-2008	Am. & Ren.(T)	5-1-2008	580-040-0290	2-19-2008	Suspend	4-1-2008
577-060-0020	7-1-2008	Amend(T)	7-1-2008	580-040-0292	2-19-2008	Suspend	4-1-2008
577-577-030-0035	5-16-2008	Amend	6-1-2008	580-040-0295	2-19-2008	Suspend	4-1-2008
578-041-0030	6-10-2008	Amend	7-1-2008	580-042-0010	2-19-2008	Amend(T)	4-1-2008
578-072-0010	6-10-2008	Amend	7-1-2008	580-043-0060	1-14-2008	Amend	2-1-2008
578-072-0030	6-10-2008	Amend	7-1-2008	580-043-0065	1-14-2008	Amend	2-1-2008
578-072-0050	6-10-2008	Amend	7-1-2008	580-043-0070	1-14-2008	Amend	2-1-2008
578-072-0070	6-10-2008	Amend	7-1-2008	580-043-0075	1-14-2008	Amend	2-1-2008
579-020-0006	3-14-2008	Amend	4-1-2008	580-043-0085	1-14-2008	Amend	2-1-2008
579-020-0008	4-15-2008	Suspend	5-1-2008	580-043-0090	1-14-2008	Amend	2-1-2008
579-020-0012	4-15-2008	Suspend	5-1-2008	580-043-0095	1-14-2008	Amend	2-1-2008
579-020-0017	4-15-2008	Suspend	5-1-2008	580-043-0100	1-14-2008	Adopt	2-1-2008
579-030-0005	3-14-2008	Amend	4-1-2008	580-050-0001	2-19-2008	Suspend	4-1-2008
579-030-0010	3-14-2008	Amend	4-1-2008	580-050-0005	2-19-2008	Suspend	4-1-2008
579-030-0015	3-14-2008	Amend	4-1-2008	580-050-0010	2-19-2008	Suspend	4-1-2008
579-030-0020	3-14-2008	Amend	4-1-2008	580-050-0015	2-19-2008	Suspend	4-1-2008
580-023-0005	2-19-2008	Suspend	4-1-2008	580-050-0020	2-19-2008	Suspend	4-1-2008
580-023-0010	2-19-2008	Suspend	4-1-2008	580-050-0025	2-19-2008	Suspend	4-1-2008
580-023-0015	2-19-2008	Suspend	4-1-2008	580-050-0032	2-19-2008	Suspend	4-1-2008
580-023-0020	2-19-2008	Suspend	4-1-2008	580-050-0033	2-19-2008	Suspend	4-1-2008
580-023-0025	2-19-2008	Suspend	4-1-2008	580-050-0040	2-19-2008	Suspend	4-1-2008
580-023-0030	2-19-2008	Suspend	4-1-2008	580-050-0041	2-19-2008	Suspend	4-1-2008
580-023-0035	2-19-2008	Suspend	4-1-2008	580-050-0042	2-19-2008	Suspend	4-1-2008
580-023-0040	2-19-2008	Suspend	4-1-2008	580-050-0100	2-19-2008	Suspend	4-1-2008
580-023-0045	2-19-2008	Suspend	4-1-2008	580-050-0105	2-19-2008	Suspend	4-1-2008
580-023-0050	2-19-2008	Suspend	4-1-2008	580-060-0000	2-19-2008	Adopt(T)	4-1-2008
580-023-0055	2-19-2008	Suspend	4-1-2008	580-060-0005	2-19-2008	Adopt(T)	4-1-2008
580-023-0060	2-19-2008	Suspend	4-1-2008	580-060-0010	2-19-2008	Adopt(T)	4-1-2008
580-023-0065	2-19-2008	Suspend	4-1-2008	580-060-0015	2-19-2008	Adopt(T)	4-1-2008
580-023-0105	2-19-2008	Adopt(T)	4-1-2008	580-060-0020	2-19-2008	Adopt(T)	4-1-2008
580-023-0110	2-19-2008	Adopt(T)	4-1-2008	580-060-0025	2-19-2008	Adopt(T)	4-1-2008
580-023-0115	2-19-2008	Adopt(T)	4-1-2008	580-060-0030	2-19-2008	Adopt(T)	4-1-2008
580-023-0120	2-19-2008	Adopt(T)	4-1-2008	580-060-0035	2-19-2008	Adopt(T)	4-1-2008
580-023-0125	2-19-2008	Adopt(T)	4-1-2008	580-060-0040	2-19-2008	Adopt(T)	4-1-2008
580-023-0130	2-19-2008	Adopt(T)	4-1-2008	580-060-0045	2-19-2008	Adopt(T)	4-1-2008
580-023-0135	2-19-2008	Adopt(T)	4-1-2008	580-060-0050	2-19-2008	Adopt(T)	4-1-2008
580-023-0140	2-19-2008	Adopt(T)	4-1-2008	580-060-0055	2-19-2008	Adopt(T)	4-1-2008
580-023-0145	2-19-2008	Adopt(T)	4-1-2008	580-060-0060	2-19-2008	Adopt(T)	4-1-2008
580-023-0150	2-19-2008	Adopt(T)	4-1-2008	580-061-0000	2-19-2008	Adopt(T)	4-1-2008
580-040-0035	1-14-2008	Amend	2-1-2008	580-061-0005	2-19-2008	Adopt(T)	4-1-2008
580-040-0040	3-20-2008	Amend(T)	5-1-2008	580-061-0010	2-19-2008	Adopt(T)	4-1-2008
580-040-0040	6-17-2008	Amend	8-1-2008	580-061-0015	2-19-2008	Adopt(T)	4-1-2008
580-040-0100	2-19-2008	Suspend	4-1-2008	580-061-0020	2-19-2008	Adopt(T)	4-1-2008
580-040-0200	2-19-2008	Suspend	4-1-2008	580-061-0025	2-19-2008	Adopt(T)	4-1-2008
580-040-0205	2-19-2008	Suspend	4-1-2008	580-061-0030	2-19-2008	Adopt(T)	4-1-2008

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580-061-0040	2-19-2008	Adopt(T)	4-1-2008	581-020-0250	12-12-2007	Adopt	1-1-2008
580-061-0045	2-19-2008	Adopt(T)	4-1-2008	581-020-0339	6-27-2008	Adopt	8-1-2008
580-061-0050	2-19-2008	Adopt(T)	4-1-2008	581-020-0359	3-21-2008	Adopt	5-1-2008
580-061-0055	2-19-2008	Adopt(T)	4-1-2008	581-020-0361	3-21-2008	Adopt	5-1-2008
580-061-0060	2-19-2008	Adopt(T)	4-1-2008	581-021-0045	5-23-2008	Amend	7-1-2008
580-061-0065	2-19-2008	Adopt(T)	4-1-2008	581-021-0046	5-23-2008	Amend	7-1-2008
580-061-0070	2-19-2008	Adopt(T)	4-1-2008	581-022-0405	6-27-2008	Amend	8-1-2008
580-061-0075	2-19-2008	Adopt(T)	4-1-2008	581-022-0413	5-23-2008	Amend	7-1-2008
580-061-0080	2-19-2008	Adopt(T)	4-1-2008	581-022-0615	6-27-2008	Adopt	8-1-2008
580-061-0085	2-19-2008	Adopt(T)	4-1-2008	581-022-1065	1-25-2008	Amend	3-1-2008
580-061-0090	2-19-2008	Adopt(T)	4-1-2008	581-022-1130	6-27-2008	Amend	8-1-2008
580-061-0095	2-19-2008	Adopt(T)	4-1-2008	581-022-1134	5-23-2008	Adopt	7-1-2008
580-061-0100	2-19-2008	Adopt(T)	4-1-2008	581-022-1135	5-23-2008	Adopt	7-1-2008
580-061-0105	2-19-2008	Adopt(T)	4-1-2008	581-022-1510	6-27-2008	Amend	8-1-2008
580-061-0110	2-19-2008	Adopt(T)	4-1-2008	581-022-1661	12-12-2007	Adopt	1-1-2008
580-061-0115	2-19-2008	Adopt(T)	4-1-2008	581-022-1940	12-12-2007	Amend	1-1-2008
580-061-0120	2-19-2008	Adopt(T)	4-1-2008	581-022-1941	12-12-2007	Adopt	1-1-2008
580-061-0125	2-19-2008	Adopt(T)	4-1-2008	581-023-0035	2-22-2008	Amend	4-1-2008
580-061-0130	2-19-2008	Adopt(T)	4-1-2008	581-023-0040	3-21-2008	Amend	5-1-2008
580-061-0135	2-19-2008	Adopt(T)	4-1-2008	581-023-0041	2-22-2008	Amend	4-1-2008
580-061-0140	2-19-2008	Adopt(T)	4-1-2008	581-023-0050	6-27-2008	Am. & Ren.	8-1-2008
580-061-0145	2-19-2008	Adopt(T)	4-1-2008	581-023-0100	6-27-2008	Amend	8-1-2008
580-061-0145	6-5-2008	Amend(T)	7-1-2008	581-023-0104	12-12-2007	Amend	1-1-2008
580-061-0145(T)	6-5-2008	Suspend	7-1-2008	581-023-0112	4-21-2008	Amend	6-1-2008
580-061-0150	2-19-2008	Adopt(T)	4-1-2008	581-024-0205	5-23-2008	Amend	7-1-2008
580-061-0155	2-19-2008	Adopt(T)	4-1-2008	581-024-0245	5-23-2008	Amend	7-1-2008
580-061-0160	2-19-2008	Adopt(T)	4-1-2008	581-024-0285	12-12-2007	Amend	1-1-2008
580-062-0000	2-19-2008	Adopt(T)	4-1-2008	581-045-0001	5-23-2008	Amend	7-1-2008
580-062-0005	2-19-2008	Adopt(T)	4-1-2008	581-049-0020	5-23-2008	Amend	7-1-2008
580-062-0010	2-19-2008	Adopt(T)	4-1-2008	581-053-5556	4-18-2008	Amend	6-1-2008
580-062-0015	2-19-2008	Adopt(T)	4-1-2008	582-001-0010	2-4-2008	Amend	3-1-2008
580-062-0020	2-19-2008	Adopt(T)	4-1-2008	582-001-0010	3-3-2008	Amend	4-1-2008
580-063-0000	2-19-2008	Adopt(T)	4-1-2008	582-001-0010	4-10-2008	Amend	5-1-2008
580-063-0005	2-19-2008	Adopt(T)	4-1-2008	582-030-0005	2-4-2008	Amend	3-1-2008
580-063-0010	2-19-2008	Adopt(T)	4-1-2008	582-030-0008	2-4-2008	Amend	3-1-2008
580-063-0010	6-5-2008	Amend(T)	7-1-2008	582-070-0020	2-4-2008	Amend	3-1-2008
580-063-0010(T)	6-5-2008	Suspend	7-1-2008	582-070-0020	3-3-2008	Amend	4-1-2008
580-063-0015	2-19-2008	Adopt(T)	4-1-2008	582-070-0020	4-10-2008	Amend	5-1-2008
580-063-0020	2-19-2008	Adopt(T)	4-1-2008	582-070-0025	2-4-2008	Amend	3-1-2008
580-063-0020	6-5-2008	Amend(T)	7-1-2008	582-070-0030	2-4-2008	Amend	3-1-2008
580-063-0020(T)	6-5-2008	Suspend	7-1-2008	582-080-0020	3-3-2008	Amend	4-1-2008
580-063-0025	2-19-2008	Adopt(T)	4-1-2008	583-050-0011	2-7-2008	Amend	3-1-2008
580-063-0030	2-19-2008	Adopt(T)	4-1-2008	583-070-0002	4-14-2008	Adopt	5-1-2008
580-063-0035	2-19-2008	Adopt(T)	4-1-2008	583-070-0011	4-14-2008	Adopt	5-1-2008
580-063-0040	2-19-2008	Adopt(T)	4-1-2008	583-070-0015	4-14-2008	Adopt	5-1-2008
580-063-0045	2-19-2008	Adopt(T)	4-1-2008	583-070-0020	4-14-2008	Adopt	5-1-2008
581-011-0140	1-25-2008	Amend	3-1-2008	584-005-0005	4-15-2008	Amend	5-1-2008
581-015-0055	2-22-2008	Repeal	4-1-2008	584-005-0005	5-30-2008	Amend(T)	7-1-2008
581-015-0065	2-22-2008	Repeal	4-1-2008	584-010-0006	4-15-2008	Adopt	5-1-2008
581-015-2035	4-21-2008	Adopt	6-1-2008	584-010-0010	4-15-2008	Amend	5-1-2008
581-015-2570	12-12-2007	Amend	1-1-2008	584-010-0015	4-15-2008	Amend	5-1-2008
581-015-2595	12-12-2007	Amend	1-1-2008	584-010-0020	4-15-2008	Amend	5-1-2008
581-019-0033	2-22-2008	Adopt(T)	4-1-2008	584-010-0025	4-15-2008	Amend	5-1-2008
581-020-0060	1-25-2008	Amend	3-1-2008	584-010-0030	4-15-2008	Amend	5-1-2008
581-020-0065	1-25-2008	Amend	3-1-2008	584-010-0035	4-15-2008	Amend	5-1-2008
581-020-0070	1-25-2008	Amend	3-1-2008	584-010-0040	4-15-2008	Repeal	5-1-2008
581-020-0075	1-25-2008	Amend	3-1-2008	584-010-0045	4-15-2008	Amend	5-1-2008
581-020-0080	1-25-2008	Amend	3-1-2008	584-010-0050	4-15-2008	Amend	5-1-2008
581-020-0085	1-25-2008	Amend	3-1-2008	584-010-0055	4-15-2008	Amend	5-1-2008

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584-010-0065	4-15-2008	Repeal	5-1-2008	584-050-0002	12-14-2007	Amend	1-1-2008
584-010-0070	4-15-2008	Repeal	5-1-2008	584-050-0005	12-14-2007	Amend	1-1-2008
584-010-0080	4-15-2008	Amend	5-1-2008	584-050-0006	12-14-2007	Amend	1-1-2008
584-010-0090	4-15-2008	Amend	5-1-2008	584-050-0009	12-14-2007	Amend	1-1-2008
584-010-0100	4-15-2008	Amend	5-1-2008	584-050-0012	12-14-2007	Amend	1-1-2008
584-010-0120	4-15-2008	Repeal	5-1-2008	584-050-0015	12-14-2007	Amend	1-1-2008
584-010-0140	4-15-2008	Amend	5-1-2008	584-050-0016	12-14-2007	Amend	1-1-2008
584-017-0001	4-15-2008	Am. & Ren.	5-1-2008	584-050-0018	12-14-2007	Amend	1-1-2008
584-017-0115	6-13-2008	Amend	7-1-2008	584-050-0019	12-14-2007	Amend	1-1-2008
584-017-0175	4-15-2008	Amend	5-1-2008	584-050-0020	12-14-2007	Amend	1-1-2008
584-017-0185	2-15-2008	Amend(T)	3-1-2008	584-050-0035	12-14-2007	Amend	1-1-2008
584-017-0185	6-13-2008	Amend	7-1-2008	584-050-0040	12-14-2007	Amend	1-1-2008
584-017-0350	4-15-2008	Repeal	5-1-2008	584-050-0042	12-14-2007	Amend	1-1-2008
584-017-0351	12-14-2007	Adopt	1-1-2008	584-050-0065	12-14-2007	Amend	1-1-2008
584-017-0355	4-15-2008	Amend	5-1-2008	584-050-0066	12-14-2007	Amend	1-1-2008
584-017-0442	4-15-2008	Repeal	5-1-2008	584-050-0067	12-14-2007	Amend	1-1-2008
584-017-0452	4-15-2008	Repeal	5-1-2008	584-050-0070	12-14-2007	Amend	1-1-2008
584-019-0002	12-14-2007	Amend	1-1-2008	584-052-0015	4-15-2008	Amend	5-1-2008
584-019-0003	12-14-2007	Amend	1-1-2008	584-052-0032	12-14-2007	Amend	1-1-2008
584-019-0020	12-14-2007	Repeal	1-1-2008	584-060-0002	4-15-2008	Amend	5-1-2008
584-019-0025	12-14-2007	Amend	1-1-2008	584-060-0012	12-14-2007	Amend	1-1-2008
584-019-0035	12-14-2007	Amend	1-1-2008	584-060-0012	4-15-2008	Amend	5-1-2008
584-019-0040	12-14-2007	Amend	1-1-2008	584-060-0014	4-15-2008	Amend	5-1-2008
584-020-0000	12-14-2007	Amend	1-1-2008	584-060-0051	2-15-2008	Amend(T)	3-1-2008
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584-020-0015	12-14-2007	Amend	1-1-2008	584-065-0070	4-15-2008	Amend	5-1-2008
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584-020-0025	12-14-2007	Amend	1-1-2008	584-065-0120	6-13-2008	Adopt	7-1-2008
584-020-0030	12-14-2007	Amend	1-1-2008	584-070-0011	12-14-2007	Repeal	1-1-2008
584-020-0035	12-14-2007	Amend	1-1-2008	584-070-0012	6-13-2008	Amend	7-1-2008
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584-020-0041	12-14-2007	Amend	1-1-2008	584-070-0021	12-14-2007	Repeal	1-1-2008
584-021-0105	6-13-2008	Amend	7-1-2008	584-070-0132	4-15-2008	Amend	5-1-2008
584-021-0175	6-13-2008	Repeal	7-1-2008	584-070-0320	4-15-2008	Repeal	5-1-2008
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584-023-0025	12-14-2007	Amend	1-1-2008	603-011-0610	11-28-2007	Amend	1-1-2008
584-036-0055	6-13-2008	Amend	7-1-2008	603-011-0610	9-1-2008	Amend	7-1-2008
584-036-0060	6-13-2008	Repeal	7-1-2008	603-011-0615	9-1-2008	Adopt	7-1-2008
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584-038-0335	12-14-2007	Amend	1-1-2008	603-014-0055	2-6-2008	Amend	3-1-2008
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584-040-0080	12-14-2007	Amend	1-1-2008	603-014-0095	2-6-2008	Amend	3-1-2008
584-040-0310	12-14-2007	Amend	1-1-2008	603-014-0100	2-6-2008	Repeal	3-1-2008
584-040-0315	12-14-2007	Amend	1-1-2008	603-014-0135	2-6-2008	Amend	3-1-2008
584-044-0011	4-15-2008	Amend	5-1-2008	603-027-0410	2-15-2008	Amend	3-1-2008
584-044-0015	4-15-2008	Amend	5-1-2008	603-027-0410	3-17-2008	Amend(T)	4-1-2008
584-044-0023	4-15-2008	Amend	5-1-2008	603-027-0420	11-29-2007	Amend(T)	1-1-2008
584-046-0003	6-13-2008	Amend	7-1-2008	603-027-0420	2-15-2008	Amend	3-1-2008
584-046-0016	6-13-2008	Amend	7-1-2008	603-027-0420	3-17-2008	Amend(T)	4-1-2008
584-046-0019	6-13-2008	Amend	7-1-2008	603-027-0420(T)	11-29-2007	Suspend	1-1-2008
584-046-0020	4-15-2008	Amend	5-1-2008	603-027-0430	11-29-2007	Amend(T)	1-1-2008
584-046-0020	6-13-2008	Amend	7-1-2008	603-027-0430	2-15-2008	Amend	3-1-2008
584-046-0021	6-13-2008	Amend	7-1-2008	603-027-0430	3-17-2008	Amend(T)	4-1-2008
584-046-0024	4-15-2008	Amend	5-1-2008	603-027-0430(T)	11-29-2007	Suspend	1-1-2008
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603-027-0470	2-15-2008	Amend	3-1-2008	629-048-0200	1-1-2008	Adopt	2-1-2008
603-027-0490	2-15-2008	Amend	3-1-2008	629-048-0210	1-1-2008	Adopt	2-1-2008
603-027-0490	3-17-2008	Amend(T)	4-1-2008	629-048-0220	1-1-2008	Adopt	2-1-2008
603-052-0127	2-8-2008	Amend	3-1-2008	629-048-0230	1-1-2008	Adopt	2-1-2008
603-052-0129	2-8-2008	Amend	3-1-2008	629-048-0300	1-1-2008	Adopt	2-1-2008
603-052-0130	2-8-2008	Repeal	3-1-2008	629-048-0310	1-1-2008	Adopt	2-1-2008
603-052-0132	2-8-2008	Repeal	3-1-2008	629-048-0320	1-1-2008	Adopt	2-1-2008
603-052-0134	2-8-2008	Repeal	3-1-2008	629-048-0330	1-1-2008	Adopt	2-1-2008
603-052-0136	2-8-2008	Repeal	3-1-2008	629-048-0400	1-1-2008	Adopt	2-1-2008
603-052-0138	2-8-2008	Repeal	3-1-2008	629-048-0450	1-1-2008	Adopt	2-1-2008
603-052-0140	2-8-2008	Repeal	3-1-2008	629-048-0500	1-1-2008	Adopt	2-1-2008
603-052-0142	2-8-2008	Repeal	3-1-2008	629-623-0400	7-18-2008	Amend(T)	8-1-2008
603-052-0145	2-8-2008	Repeal	3-1-2008	629-623-0500	7-18-2008	Suspend	8-1-2008
603-052-0265	7-11-2008	Amend	8-1-2008	635-001-0210	1-1-2008	Amend	2-1-2008
603-052-0347	1-11-2008	Amend	2-1-2008	635-003-0003	5-1-2008	Amend	6-1-2008
603-052-0360	2-8-2008	Amend	3-1-2008	635-003-0004	3-15-2008	Amend(T)	4-1-2008
603-052-0395	2-28-2008	Adopt	4-1-2008	635-003-0004	6-21-2008	Amend(T)	8-1-2008
603-052-0880	1-7-2008	Amend	2-1-2008	635-003-0004(T)	6-21-2008	Suspend	8-1-2008
603-052-1200	3-7-2008	Amend	4-1-2008	635-003-0077	6-21-2008	Amend(T)	8-1-2008
603-052-1221	2-8-2008	Amend	3-1-2008	635-003-0085	9-1-2008	Amend(T)	8-1-2008
603-052-1230	1-16-2008	Amend	3-1-2008	635-004-0016	6-24-2008	Amend(T)	8-1-2008
603-052-1240	1-7-2008	Amend	2-1-2008	635-004-0018	1-1-2008	Amend	1-1-2008
603-052-1250	1-16-2008	Amend	3-1-2008	635-004-0019	11-28-2007	Amend(T)	1-1-2008
603-054-0016	1-7-2008	Amend	2-1-2008	635-004-0019	12-11-2007	Amend(T)	1-1-2008
603-054-0016	4-15-2008	Amend	5-1-2008	635-004-0019	5-1-2008	Amend(T)	6-1-2008
603-054-0017	1-7-2008	Amend	2-1-2008	635-004-0019(T)	11-28-2007	Suspend	1-1-2008
603-054-0017	4-15-2008	Amend	5-1-2008	635-004-0027	1-1-2008	Amend(T)	2-1-2008
603-054-0018	1-7-2008	Amend	2-1-2008	635-004-0033	11-28-2007	Amend(T)	1-1-2008
603-054-0018	4-15-2008	Amend	5-1-2008	635-004-0033	1-1-2008	Amend	1-1-2008
603-054-0024	1-7-2008	Amend	2-1-2008	635-004-0033	7-1-2008	Amend(T)	8-1-2008
603-054-0035	2-15-2008	Amend	3-1-2008	635-004-0033(T)	11-28-2007	Suspend	1-1-2008
603-058-0032	1-1-2009	Adopt	6-1-2008	635-004-0170	11-28-2007	Amend(T)	1-1-2008
617-010-0045	7-1-2008	Amend	7-1-2008	635-004-0170	1-1-2008	Amend	1-1-2008
620-020-0010	1-25-2008	Adopt	3-1-2008	635-005-0005	1-23-2008	Amend	3-1-2008
620-020-0020	1-25-2008	Adopt	3-1-2008	635-005-0055	12-11-2007	Amend(T)	1-1-2008
620-020-0030	1-25-2008	Adopt	3-1-2008	635-005-0055	12-14-2007	Amend(T)	1-1-2008
623-040-0005	12-3-2007	Adopt	1-1-2008	635-005-0055	12-14-2007	Suspend	1-1-2008
623-040-0010	12-3-2007	Adopt	1-1-2008	635-005-0055	3-25-2008	Amend(T)	5-1-2008
623-040-0015	12-3-2007	Adopt	1-1-2008	635-005-0055	6-11-2008	Amend(T)	7-1-2008
624-030-0010	7-15-2008	Amend	8-1-2008	635-005-0055(T)	3-25-2008	Suspend	5-1-2008
624-040-0010	7-15-2008	Adopt	8-1-2008	635-005-0055(T)	6-11-2008	Suspend	7-1-2008
624-040-0020	7-15-2008	Adopt	8-1-2008	635-005-0064	1-23-2008	Amend	3-1-2008
624-040-0030	7-15-2008	Adopt	8-1-2008	635-005-0065	1-23-2008	Amend	3-1-2008
629-001-0005	3-7-2008	Amend	4-1-2008	635-005-0066	1-23-2008	Amend	3-1-2008
629-041-0555	5-12-2008	Amend	6-1-2008	635-006-0212	7-10-2008	Amend(T)	8-1-2008
629-041-0557	5-12-2008	Amend	6-1-2008	635-006-0215	7-10-2008	Amend(T)	8-1-2008
629-043-0040	1-1-2008	Amend	2-1-2008	635-006-0225	4-1-2008	Amend(T)	5-1-2008
629-043-0041	1-1-2008	Repeal	2-1-2008	635-006-0225	7-10-2008	Amend(T)	8-1-2008
629-043-0043	1-1-2008	Repeal	2-1-2008	635-006-0225(T)	7-10-2008	Suspend	8-1-2008
629-048-0001	1-1-2008	Adopt	2-1-2008	635-006-0230	4-1-2008	Amend(T)	5-1-2008
629-048-0005	1-1-2008	Adopt	2-1-2008	635-006-0232	1-15-2008	Amend	2-1-2008
629-048-0010	1-1-2008	Adopt	2-1-2008	635-006-0850	1-1-2008	Amend(T)	2-1-2008
629-048-0020	1-1-2008	Adopt	2-1-2008	635-006-0850	1-23-2008	Amend	3-1-2008
629-048-0100	1-1-2008	Adopt	2-1-2008	635-006-0850(T)	1-23-2008	Repeal	3-1-2008
629-048-0110	1-1-2008	Adopt	2-1-2008	635-006-0910	1-23-2008	Amend	3-1-2008
629-048-0120	1-1-2008	Adopt	2-1-2008	635-006-0930	1-23-2008	Amend	3-1-2008
629-048-0130	1-1-2008	Adopt	2-1-2008	635-006-1015	1-15-2008	Amend	2-1-2008
629-048-0140	1-1-2008	Adopt	2-1-2008	635-006-1065	1-15-2008	Amend	2-1-2008
629-048-0150	1-1-2008	Adopt	2-1-2008	635-006-1075	1-15-2008	Amend	2-1-2008

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635-008-0120	4-24-2008	Amend	6-1-2008	635-023-0095	3-26-2008	Amend(T)	5-1-2008
635-011-0100	1-1-2008	Amend	2-1-2008	635-023-0095	7-10-2008	Amend(T)	8-1-2008
635-013-0003	1-1-2008	Amend	2-1-2008	635-023-0095	7-12-2008	Amend(T)	8-1-2008
635-013-0003	5-1-2008	Amend	6-1-2008	635-023-0095(T)	1-1-2008	Suspend	2-1-2008
635-013-0004	1-1-2008	Amend	2-1-2008	635-023-0095(T)	2-11-2008	Repeal	3-1-2008
635-013-0004	3-15-2008	Amend(T)	4-1-2008	635-023-0095(T)	7-10-2008	Suspend	8-1-2008
635-013-0004	6-21-2008	Amend(T)	8-1-2008	635-023-0095(T)	7-12-2008	Suspend	8-1-2008
635-013-0004(T)	6-21-2008	Suspend	8-1-2008	635-023-0125	1-1-2008	Amend	2-1-2008
635-013-0004(T)	8-1-2008	Suspend	8-1-2008	635-023-0125	2-25-2008	Amend(T)	4-1-2008
635-013-0007	8-1-2008	Amend(T)	8-1-2008	635-023-0125	2-27-2008	Amend(T)	4-1-2008
635-013-0009	3-15-2008	Amend(T)	4-1-2008	635-023-0125	4-21-2008	Amend(T)	6-1-2008
635-013-0009	8-1-2008	Amend(T)	8-1-2008	635-023-0125	5-13-2008	Amend(T)	6-1-2008
635-013-0009(T)	8-1-2008	Suspend	8-1-2008	635-023-0125(T)	4-21-2008	Suspend	6-1-2008
635-014-0080	1-1-2008	Amend	2-1-2008	635-023-0125(T)	5-13-2008	Suspend	6-1-2008
635-014-0090	1-1-2008	Amend	2-1-2008	635-023-0128	1-1-2008	Amend	2-1-2008
635-014-0090	3-15-2008	Amend(T)	4-1-2008	635-023-0128	5-1-2008	Amend	6-1-2008
635-014-0090	8-1-2008	Amend(T)	8-1-2008	635-023-0128	6-16-2008	Amend(T)	7-1-2008
635-014-0090(T)	8-1-2008	Suspend	8-1-2008	635-023-0128	6-21-2008	Amend(T)	8-1-2008
635-016-0080	1-1-2008	Amend	2-1-2008	635-023-0128	6-28-2008	Amend(T)	8-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008	635-023-0128(T)	6-21-2008	Suspend	8-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008	635-023-0128(T)	6-28-2008	Suspend	8-1-2008
635-016-0090	6-1-2008	Amend(T)	7-1-2008	635-023-0130	1-1-2008	Amend	2-1-2008
635-016-0090	8-1-2008	Amend(T)	8-1-2008	635-023-0130	5-1-2008	Amend	6-1-2008
635-017-0080	1-1-2008	Amend	2-1-2008	635-023-0134	4-26-2008	Amend(T)	6-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008	635-023-0134	6-21-2008	Amend(T)	8-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008	635-023-0134(T)	6-21-2008	Suspend	8-1-2008
635-017-0090	1-9-2008	Amend(T)	2-1-2008	635-039-0080	1-1-2008	Amend	2-1-2008
635-017-0090	2-1-2008	Amend(T)	3-1-2008	635-039-0085	6-1-2008	Amend(T)	7-1-2008
635-017-0090	3-1-2008	Amend(T)	4-1-2008	635-039-0085	8-2-2008	Amend(T)	8-1-2008
635-017-0090	5-12-2008	Amend(T)	6-1-2008	635-039-0090	1-1-2008	Amend	2-1-2008
635-017-0090	6-2-2008	Amend(T)	7-1-2008	635-039-0090	7-7-2008	Amend(T)	8-1-2008
635-017-0090(T)	2-1-2008	Suspend	3-1-2008	635-041-0050	2-11-2008	Amend	3-1-2008
635-017-0090(T)	5-12-2008	Suspend	6-1-2008	635-041-0065	1-31-2008	Amend(T)	3-1-2008
635-017-0090(T)	6-2-2008	Suspend	7-1-2008	635-041-0065	2-29-2008	Amend(T)	4-1-2008
635-017-0095	1-1-2008	Amend	2-1-2008	635-041-0065	3-5-2008	Amend(T)	4-1-2008
635-017-0095	1-1-2008	Amend(T)	2-1-2008	635-041-0065	3-10-2008	Amend(T)	4-1-2008
635-017-0095	2-11-2008	Amend	3-1-2008	635-041-0065(T)	3-10-2008	Suspend	4-1-2008
635-017-0095(T)	1-1-2008	Suspend	2-1-2008	635-041-0076	5-5-2008	Amend(T)	6-1-2008
635-017-0095(T)	2-11-2008	Repeal	3-1-2008	635-041-0076	5-11-2008	Amend(T)	6-1-2008
635-018-0080	1-1-2008	Amend	2-1-2008	635-041-0076	6-16-2008	Amend(T)	7-1-2008
635-018-0090	1-1-2008	Amend	2-1-2008	635-041-0076	6-21-2008	Amend(T)	8-1-2008
635-018-0090	4-15-2008	Amend(T)	5-1-2008	635-041-0076	6-28-2008	Amend(T)	8-1-2008
635-018-0090	5-1-2008	Amend(T)	5-1-2008	635-041-0076	7-10-2008	Amend(T)	8-1-2008
635-019-0080	1-1-2008	Amend	2-1-2008	635-041-0076(T)	5-11-2008	Suspend	6-1-2008
635-019-0090	1-1-2008	Amend	2-1-2008	635-041-0076(T)	6-16-2008	Suspend	7-1-2008
635-019-0090	5-31-2008	Amend(T)	7-1-2008	635-041-0076(T)	6-21-2008	Suspend	8-1-2008
635-019-0090	7-9-2008	Amend(T)	8-1-2008	635-041-0076(T)	6-28-2008	Suspend	8-1-2008
635-021-0080	1-1-2008	Amend	2-1-2008	635-041-0076(T)	7-10-2008	Suspend	8-1-2008
635-021-0090	1-1-2008	Amend	2-1-2008	635-042-0010	2-11-2008	Amend	3-1-2008
635-021-0090	5-31-2008	Amend(T)	7-1-2008	635-042-0022	4-1-2008	Amend(T)	5-1-2008
635-021-0090	7-4-2008	Amend(T)	8-1-2008	635-042-0022	4-8-2008	Amend(T)	5-1-2008
635-021-0090	7-9-2008	Amend(T)	8-1-2008	635-042-0022	4-15-2008	Amend(T)	5-1-2008
635-021-0090(T)	7-4-2008	Suspend	8-1-2008	635-042-0022(T)	4-15-2008	Suspend	5-1-2008
635-021-0090(T)	7-9-2008	Suspend	8-1-2008	635-042-0022(T)	6-28-2008	Suspend	8-1-2008
635-023-0080	1-1-2008	Amend	2-1-2008	635-042-0025	6-28-2008	Amend(T)	8-1-2008
635-023-0090	1-1-2008	Amend	2-1-2008	635-042-0027	6-21-2008	Amend(T)	8-1-2008
635-023-0095	1-1-2008	Amend	2-1-2008	635-042-0027	6-24-2008	Amend(T)	7-1-2008
635-023-0095	1-1-2008	Amend(T)	2-1-2008	635-042-0027	7-7-2008	Amend(T)	8-1-2008
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635-042-0110	5-12-2008	Amend(T)	4-1-2008	635-049-0060	5-28-2008	Repeal	7-1-2008
635-042-0110	6-21-2008	Amend(T)	8-1-2008	635-049-0070	5-28-2008	Repeal	7-1-2008
635-042-0110(T)	6-21-2008	Suspend	8-1-2008	635-049-0075	5-28-2008	Adopt	7-1-2008
635-042-0130	12-1-2007	Amend(T)	1-1-2008	635-049-0080	5-28-2008	Repeal	7-1-2008
635-042-0130	1-1-2008	Amend(T)	2-1-2008	635-049-0085	5-28-2008	Adopt	7-1-2008
635-042-0130	2-11-2008	Amend	3-1-2008	635-049-0090	5-28-2008	Amend	7-1-2008
635-042-0130(T)	1-1-2008	Suspend	2-1-2008	635-049-0095	5-28-2008	Adopt	7-1-2008
635-042-0130(T)	2-11-2008	Repeal	3-1-2008	635-049-0100	5-28-2008	Repeal	7-1-2008
635-042-0135	1-1-2008	Amend(T)	2-1-2008	635-049-0105	5-28-2008	Adopt	7-1-2008
635-042-0135	1-31-2008	Amend(T)	3-1-2008	635-049-0110	5-28-2008	Repeal	7-1-2008
635-042-0135	2-11-2008	Amend	3-1-2008	635-049-0115	5-28-2008	Adopt	7-1-2008
635-042-0135	2-21-2008	Amend(T)	4-1-2008	635-049-0120	5-28-2008	Repeal	7-1-2008
635-042-0135(T)	1-31-2008	Suspend	3-1-2008	635-049-0125	5-28-2008	Adopt	7-1-2008
635-042-0135(T)	2-11-2008	Repeal	3-1-2008	635-049-0130	5-28-2008	Repeal	7-1-2008
635-042-0145	1-31-2008	Amend(T)	3-1-2008	635-049-0135	5-28-2008	Adopt	7-1-2008
635-042-0145	3-2-2008	Amend(T)	4-1-2008	635-049-0140	5-28-2008	Repeal	7-1-2008
635-042-0145	3-30-2008	Amend(T)	5-1-2008	635-049-0145	5-28-2008	Adopt	7-1-2008
635-042-0145	5-12-2008	Amend(T)	6-1-2008	635-049-0160	5-28-2008	Repeal	7-1-2008
635-042-0145	6-4-2008	Amend(T)	7-1-2008	635-049-0165	5-28-2008	Adopt	7-1-2008
635-042-0145(T)	3-2-2008	Suspend	4-1-2008	635-049-0170	5-28-2008	Repeal	7-1-2008
635-042-0145(T)	3-30-2008	Suspend	5-1-2008	635-049-0171	5-28-2008	Repeal	7-1-2008
635-042-0145(T)	5-12-2008	Suspend	6-1-2008	635-049-0175	5-28-2008	Adopt	7-1-2008
635-042-0145(T)	6-4-2008	Suspend	7-1-2008	635-049-0180	5-28-2008	Repeal	7-1-2008
635-042-0160	1-31-2008	Amend(T)	3-1-2008	635-049-0185	5-28-2008	Adopt	7-1-2008
635-042-0160	3-2-2008	Amend(T)	4-1-2008	635-049-0190	5-28-2008	Repeal	7-1-2008
635-042-0160	5-12-2008	Amend(T)	6-1-2008	635-049-0195	5-28-2008	Adopt	7-1-2008
635-042-0160	6-4-2008	Amend(T)	7-1-2008	635-049-0200	5-28-2008	Amend	7-1-2008
635-042-0160(T)	3-2-2008	Suspend	4-1-2008	635-049-0205	5-28-2008	Adopt	7-1-2008
635-042-0160(T)	5-12-2008	Suspend	6-1-2008	635-049-0210	5-28-2008	Amend	7-1-2008
635-042-0160(T)	6-4-2008	Suspend	7-1-2008	635-049-0220	5-28-2008	Repeal	7-1-2008
635-042-0170	4-28-2008	Amend(T)	6-1-2008	635-049-0225	5-28-2008	Adopt	7-1-2008
635-042-0170	5-12-2008	Amend(T)	6-1-2008	635-049-0230	5-28-2008	Repeal	7-1-2008
635-042-0170	6-4-2008	Amend(T)	7-1-2008	635-049-0240	5-28-2008	Repeal	7-1-2008
635-042-0170(T)	5-12-2008	Suspend	6-1-2008	635-049-0245	5-28-2008	Adopt	7-1-2008
635-042-0170(T)	6-4-2008	Suspend	7-1-2008	635-049-0250	5-28-2008	Repeal	7-1-2008
635-042-0180	1-31-2008	Amend(T)	3-1-2008	635-049-0265	5-28-2008	Adopt	7-1-2008
635-042-0180	3-2-2008	Amend(T)	4-1-2008	635-049-0275	5-28-2008	Adopt	7-1-2008
635-042-0180	5-12-2008	Amend(T)	6-1-2008	635-049-0285	5-28-2008	Adopt	7-1-2008
635-042-0180	6-4-2008	Amend(T)	7-1-2008	635-049-0330	5-28-2008	Repeal	7-1-2008
635-042-0180(T)	3-2-2008	Suspend	4-1-2008	635-049-0340	5-28-2008	Repeal	7-1-2008
635-042-0180(T)	5-12-2008	Suspend	6-1-2008	635-051-0048	4-21-2008	Amend(T)	6-1-2008
635-042-0180(T)	6-4-2008	Suspend	7-1-2008	635-055-0000	2-21-2008	Amend	4-1-2008
635-043-0120	4-24-2008	Adopt	6-1-2008	635-055-0000	2-29-2008	Amend	4-1-2008
635-045-0002	5-28-2008	Amend	7-1-2008	635-055-0020	2-21-2008	Amend	4-1-2008
635-048-0005	1-1-2008	Amend	2-1-2008	635-055-0020	2-29-2008	Amend	4-1-2008
635-048-0010	1-1-2008	Amend	2-1-2008	635-055-0030	2-21-2008	Amend	4-1-2008
635-048-0030	1-1-2008	Amend	2-1-2008	635-055-0030	2-29-2008	Amend	4-1-2008
635-049-0000	5-28-2008	Repeal	7-1-2008	635-055-0035	2-21-2008	Amend	4-1-2008
635-049-0001	5-28-2008	Adopt	7-1-2008	635-055-0035	2-29-2008	Amend	4-1-2008
635-049-0005	5-28-2008	Adopt	7-1-2008	635-055-0075	2-21-2008	Amend	4-1-2008
635-049-0010	5-28-2008	Repeal	7-1-2008	635-055-0075	2-29-2008	Amend	4-1-2008
635-049-0015	5-28-2008	Adopt	7-1-2008	635-056-0010	11-19-2007	Amend	1-1-2008
635-049-0020	5-28-2008	Repeal	7-1-2008	635-056-0020	11-19-2007	Amend	1-1-2008
635-049-0025	5-28-2008	Adopt	7-1-2008	635-056-0070	5-28-2008	Amend(T)	7-1-2008
635-049-0030	5-28-2008	Repeal	7-1-2008	635-056-0075	5-28-2008	Amend(T)	7-1-2008
635-049-0035	5-28-2008	Adopt	7-1-2008	635-057-0000	11-19-2007	Adopt	1-1-2008
635-049-0040	5-28-2008	Repeal	7-1-2008	635-060-0000	6-12-2008	Amend	7-1-2008
635-049-0045	5-28-2008	Adopt	7-1-2008	635-060-0008	5-14-2008	Amend(T)	6-1-2008
635-049-0050	5-28-2008	Repeal	7-1-2008	635-060-0023	12-1-2007	Amend	1-1-2008

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635-067-0000	6-12-2008	Amend	7-1-2008	660-011-0060	2-13-2008	Amend	3-1-2008
635-068-0000	6-12-2008	Amend	7-1-2008	660-011-0060	4-18-2008	Amend	6-1-2008
635-069-0000	6-12-2008	Amend	7-1-2008	660-015-0000	4-18-2008	Amend	6-1-2008
635-070-0000	6-12-2008	Amend	7-1-2008	660-015-0005	4-18-2008	Amend	6-1-2008
635-071-0000	6-12-2008	Amend	7-1-2008	660-015-0010	4-18-2008	Amend	6-1-2008
635-073-0000	6-12-2008	Amend	7-1-2008	660-018-0005	4-18-2008	Amend	6-1-2008
635-079-0000	2-21-2008	Adopt	4-1-2008	660-018-0010	4-18-2008	Amend	6-1-2008
635-079-0005	2-21-2008	Adopt	4-1-2008	660-018-0020	4-18-2008	Amend	6-1-2008
635-079-0010	2-21-2008	Adopt	4-1-2008	660-018-0021	4-18-2008	Amend	6-1-2008
635-200-0090	12-31-2007	Amend(T)	2-1-2008	660-018-0022	4-18-2008	Amend	6-1-2008
635-200-0090	4-24-2008	Amend	6-1-2008	660-018-0025	4-18-2008	Amend	6-1-2008
635-600-0000	4-24-2008	Adopt	6-1-2008	660-018-0030	4-18-2008	Amend	6-1-2008
635-600-0005	4-24-2008	Adopt	6-1-2008	660-018-0035	4-18-2008	Amend	6-1-2008
635-600-0010	4-24-2008	Adopt	6-1-2008	660-018-0040	4-18-2008	Amend	6-1-2008
635-600-0015	4-24-2008	Adopt	6-1-2008	660-018-0045	4-18-2008	Amend	6-1-2008
635-600-0020	4-24-2008	Adopt	6-1-2008	660-018-0050	4-18-2008	Amend	6-1-2008
635-600-0025	4-24-2008	Adopt	6-1-2008	660-018-0055	4-18-2008	Amend	6-1-2008
635-600-0030	4-24-2008	Adopt	6-1-2008	660-018-0060	4-18-2008	Amend	6-1-2008
635-600-0035	4-24-2008	Adopt	6-1-2008	660-018-0085	4-18-2008	Amend	6-1-2008
635-600-0040	4-24-2008	Adopt	6-1-2008	660-018-0140	4-18-2008	Amend	6-1-2008
635-600-0050	4-24-2008	Adopt	6-1-2008	660-018-0150	4-18-2008	Amend	6-1-2008
635-600-0055	4-24-2008	Adopt	6-1-2008	660-021-0010	2-13-2008	Amend	3-1-2008
635-600-0065	4-24-2008	Adopt	6-1-2008	660-021-0020	2-13-2008	Amend	3-1-2008
641-020-0010	3-22-2008	Adopt	3-1-2008	660-021-0030	2-13-2008	Amend	3-1-2008
641-020-0020	3-22-2008	Adopt	3-1-2008	660-021-0040	2-13-2008	Amend	3-1-2008
641-020-0030	3-22-2008	Adopt	3-1-2008	660-021-0050	2-13-2008	Amend	3-1-2008
642-020-0010	3-22-2008	Adopt	3-1-2008	660-021-0060	2-13-2008	Amend	3-1-2008
642-020-0020	3-22-2008	Adopt	3-1-2008	660-021-0070	2-13-2008	Amend	3-1-2008
642-020-0030	3-22-2008	Adopt	3-1-2008	660-021-0080	2-13-2008	Amend	3-1-2008
644-040-0010	2-15-2008	Adopt	3-1-2008	660-024-0030	4-18-2008	Amend	6-1-2008
644-040-0020	2-15-2008	Adopt	3-1-2008	660-025-0040	2-13-2008	Amend	3-1-2008
644-040-0030	2-15-2008	Adopt	3-1-2008	660-026-0000	4-18-2008	Repeal	6-1-2008
646-040-0000	1-23-2008	Adopt	3-1-2008	660-026-0010	4-18-2008	Repeal	6-1-2008
646-040-0010	1-23-2008	Adopt	3-1-2008	660-026-0020	4-18-2008	Repeal	6-1-2008
646-040-0020	1-23-2008	Adopt	3-1-2008	660-026-0030	4-18-2008	Repeal	6-1-2008
647-010-0010	6-1-2008	Amend	6-1-2008	660-026-0040	4-18-2008	Repeal	6-1-2008
647-040-0000	4-1-2008	Adopt	4-1-2008	660-027-0005	2-13-2008	Adopt	3-1-2008
647-040-0010	4-1-2008	Adopt	4-1-2008	660-027-0010	2-13-2008	Adopt	3-1-2008
647-040-0020	4-1-2008	Adopt	4-1-2008	660-027-0020	2-13-2008	Adopt	3-1-2008
655-040-0000	4-1-2008	Adopt	3-1-2008	660-027-0030	2-13-2008	Adopt	3-1-2008
655-040-0010	4-1-2008	Adopt	3-1-2008	660-027-0040	2-13-2008	Adopt	3-1-2008
655-040-0020	4-1-2008	Adopt	3-1-2008	660-027-0050	2-13-2008	Adopt	3-1-2008
657-010-0015	7-1-2008	Amend	7-1-2008	660-027-0060	2-13-2008	Adopt	3-1-2008
657-020-0010	3-22-2008	Adopt	3-1-2008	660-027-0070	2-13-2008	Adopt	3-1-2008
657-020-0020	3-22-2008	Adopt	3-1-2008	660-027-0080	2-13-2008	Adopt	3-1-2008
657-020-0030	3-22-2008	Adopt	3-1-2008	660-033-0020	4-18-2008	Amend	6-1-2008
660-002-0010	12-10-2007	Amend(T)	1-1-2008	660-033-0030	4-18-2008	Amend	6-1-2008
660-002-0010	2-21-2008	Amend(T)	4-1-2008	660-033-0120	4-18-2008	Amend	6-1-2008
660-002-0010	5-23-2008	Amend	7-1-2008	660-033-0130	4-18-2008	Amend	6-1-2008
660-002-0015	12-10-2007	Amend(T)	1-1-2008	660-041-0000	12-10-2007	Amend(T)	1-1-2008
660-002-0015	2-21-2008	Amend(T)	4-1-2008	660-041-0000	2-21-2008	Amend(T)	4-1-2008
660-002-0015	5-23-2008	Amend	7-1-2008	660-041-0000	5-23-2008	Amend	7-1-2008
660-004-0010	4-18-2008	Amend	6-1-2008	660-041-0010	12-10-2007	Amend(T)	1-1-2008
660-004-0040	2-13-2008	Amend	3-1-2008	660-041-0010	2-21-2008	Amend(T)	4-1-2008
660-006-0005	4-18-2008	Amend	6-1-2008	660-041-0010	5-23-2008	Amend	7-1-2008
660-006-0010	4-18-2008	Amend	6-1-2008	660-041-0020	2-21-2008	Amend(T)	4-1-2008
660-006-0026	4-18-2008	Amend	6-1-2008	660-041-0020	5-23-2008	Amend	7-1-2008
660-006-0055	4-18-2008	Amend	6-1-2008	660-041-0030	12-10-2007	Amend(T)	1-1-2008
660-007-0005	4-18-2008	Amend	6-1-2008	660-041-0030	2-21-2008	Amend(T)	4-1-2008
660-008-0005	4-18-2008	Amend	6-1-2008	660-041-0030	5-23-2008	Amend	7-1-2008

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660-041-0040	12-10-2007	Amend(T)	1-1-2008	690-600-0070	6-6-2008	Adopt	7-1-2008
660-041-0040	2-21-2008	Amend(T)	4-1-2008	695-003-0010	3-25-2008	Adopt	5-1-2008
660-041-0040	5-23-2008	Amend	7-1-2008	695-003-0020	3-25-2008	Adopt	5-1-2008
660-041-0050	12-10-2007	Suspend	1-1-2008	695-003-0030	3-25-2008	Adopt	5-1-2008
660-041-0050	2-21-2008	Suspend	4-1-2008	695-003-0040	3-25-2008	Adopt	5-1-2008
660-041-0050	5-23-2008	Repeal	7-1-2008	695-007-0010	5-27-2008	Amend(T)	7-1-2008
660-041-0060	12-10-2007	Adopt(T)	1-1-2008	695-007-0020	5-27-2008	Amend(T)	7-1-2008
660-041-0060	2-21-2008	Adopt(T)	4-1-2008	695-007-0030	5-27-2008	Amend(T)	7-1-2008
660-041-0060	5-23-2008	Adopt	7-1-2008	695-007-0040	5-27-2008	Amend(T)	7-1-2008
660-041-0070	12-10-2007	Adopt(T)	1-1-2008	731-001-0025	12-24-2007	Amend	2-1-2008
660-041-0070	2-21-2008	Adopt(T)	4-1-2008	731-005-0450	1-24-2008	Amend(T)	3-1-2008
660-041-0070	5-23-2008	Adopt	7-1-2008	731-005-0450	5-19-2008	Amend	7-1-2008
660-041-0080	2-21-2008	Adopt(T)	4-1-2008	731-005-0450(T)	5-19-2008	Repeal	7-1-2008
660-041-0080	5-23-2008	Adopt	7-1-2008	731-005-0550	12-24-2007	Amend(T)	2-1-2008
660-041-0090	2-21-2008	Adopt(T)	4-1-2008	731-005-0550	5-19-2008	Amend	7-1-2008
660-041-0090	5-23-2008	Adopt	7-1-2008	731-005-0550(T)	5-19-2008	Repeal	7-1-2008
660-041-0100	2-21-2008	Adopt(T)	4-1-2008	732-035-0010	4-24-2008	Adopt	6-1-2008
660-041-0100	5-23-2008	Adopt	7-1-2008	732-035-0020	4-24-2008	Adopt	6-1-2008
660-041-0110	5-23-2008	Adopt	7-1-2008	732-035-0030	4-24-2008	Adopt	6-1-2008
660-041-0120	5-23-2008	Adopt	7-1-2008	732-035-0040	4-24-2008	Adopt	6-1-2008
660-041-0130	5-23-2008	Adopt	7-1-2008	732-035-0050	4-24-2008	Adopt	6-1-2008
660-041-0140	5-23-2008	Adopt	7-1-2008	732-035-0060	4-24-2008	Adopt	6-1-2008
660-041-0150	5-23-2008	Adopt	7-1-2008	732-035-0070	4-24-2008	Adopt	6-1-2008
660-041-0160	5-23-2008	Adopt	7-1-2008	732-035-0080	4-24-2008	Adopt	6-1-2008
660-041-0500	12-10-2007	Adopt(T)	1-1-2008	734-001-0025	4-24-2008	Amend	6-1-2008
660-041-0500	2-21-2008	Adopt(T)	4-1-2008	734-010-0230	1-24-2008	Amend(T)	3-1-2008
660-041-0500	5-23-2008	Adopt	7-1-2008	734-010-0230	5-19-2008	Amend	7-1-2008
660-041-0510	12-10-2007	Adopt(T)	1-1-2008	734-010-0230(T)	5-19-2008	Repeal	7-1-2008
660-041-0510	2-21-2008	Adopt(T)	4-1-2008	734-010-0260	1-24-2008	Amend(T)	3-1-2008
660-041-0510	5-23-2008	Adopt	7-1-2008	734-010-0260	5-19-2008	Amend	7-1-2008
660-041-0520	12-10-2007	Adopt(T)	1-1-2008	734-010-0260(T)	5-19-2008	Repeal	7-1-2008
660-041-0520	2-21-2008	Adopt(T)	4-1-2008	734-059-0020	12-24-2007	Adopt	2-1-2008
660-041-0520	5-23-2008	Adopt	7-1-2008	734-059-0025	12-24-2007	Adopt	2-1-2008
660-041-0530	12-10-2007	Adopt(T)	1-1-2008	734-059-0030	12-24-2007	Adopt	2-1-2008
660-041-0530	2-21-2008	Adopt(T)	4-1-2008	734-059-0050	12-24-2007	Adopt	2-1-2008
660-041-0530	5-23-2008	Adopt	7-1-2008	734-074-0010	5-19-2008	Amend	7-1-2008
664-020-0010	4-1-2008	Adopt	3-1-2008	734-075-0010	4-24-2008	Amend(T)	6-1-2008
664-020-0020	4-1-2008	Adopt	3-1-2008	734-082-0015	5-19-2008	Amend	7-1-2008
664-020-0030	4-1-2008	Adopt	3-1-2008	734-082-0040	5-19-2008	Amend	7-1-2008
670-020-0010	3-22-2008	Adopt	3-1-2008	735-010-0008	7-1-2008	Amend	8-1-2008
670-020-0020	3-22-2008	Adopt	3-1-2008	735-010-0045	12-24-2007	Amend	2-1-2008
670-020-0030	3-22-2008	Adopt	3-1-2008	735-010-0100	7-1-2008	Amend	8-1-2008
678-030-0000	1-11-2008	Adopt	2-1-2008	735-010-0130	2-4-2008	Amend(T)	3-1-2008
678-030-0010	1-11-2008	Adopt	2-1-2008	735-010-0130	7-1-2008	Amend	8-1-2008
678-030-0020	1-11-2008	Adopt	2-1-2008	735-016-0030	2-4-2008	Amend	3-1-2008
678-030-0030	1-11-2008	Adopt	2-1-2008	735-016-0040	2-4-2008	Amend	3-1-2008
679-030-0050	8-1-2008	Adopt	8-1-2008	735-016-0070	7-1-2008	Amend	8-1-2008
690-200-0028	7-1-2008	Amend	8-1-2008	735-020-0075	11-30-2007	Adopt	1-1-2008
690-200-0050	7-1-2008	Amend	8-1-2008	735-024-0070	1-1-2008	Amend(T)	2-1-2008
690-210-0280	7-1-2008	Amend	8-1-2008	735-024-0070	6-23-2008	Amend	8-1-2008
690-215-0060	7-1-2008	Amend	8-1-2008	735-024-0070(T)	6-23-2008	Repeal	8-1-2008
690-215-0080	7-1-2008	Amend	8-1-2008	735-024-0080	1-1-2008	Amend(T)	2-1-2008
690-215-0200	7-1-2008	Adopt	8-1-2008	735-024-0080	6-23-2008	Amend	8-1-2008
690-600-0000	6-6-2008	Adopt	7-1-2008	735-024-0080(T)	6-23-2008	Repeal	8-1-2008
690-600-0010	6-6-2008	Adopt	7-1-2008	735-028-0100	3-21-2008	Amend	5-1-2008
690-600-0020	6-6-2008	Adopt	7-1-2008	735-030-0300	1-1-2008	Adopt	2-1-2008
690-600-0030	6-6-2008	Adopt	7-1-2008	735-030-0310	1-1-2008	Adopt	2-1-2008
690-600-0040	6-6-2008	Adopt	7-1-2008	735-030-0320	1-1-2008	Adopt	2-1-2008
690-600-0050	6-6-2008	Adopt	7-1-2008	735-030-0330	1-1-2008	Adopt	2-1-2008
690-600-0060	6-6-2008	Adopt	7-1-2008	735-032-0020	1-1-2008	Amend(T)	2-1-2008

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735-032-0020	6-23-2008	Amend	8-1-2008	735-062-0125	7-1-2008	Adopt	8-1-2008
735-032-0020(T)	6-23-2008	Repeal	8-1-2008	735-062-0200	1-1-2008	Amend	2-1-2008
735-032-0050	1-1-2008	Amend	2-1-2008	735-062-0220	7-1-2008	Adopt	8-1-2008
735-040-0040	1-1-2008	Amend(T)	2-1-2008	735-062-0320	1-1-2008	Amend	2-1-2008
735-040-0040	6-23-2008	Amend	8-1-2008	735-062-0320	7-1-2008	Amend	8-1-2008
735-040-0040(T)	6-23-2008	Repeal	8-1-2008	735-062-0330	1-1-2008	Amend	2-1-2008
735-040-0050	1-1-2008	Amend(T)	2-1-2008	735-062-0380	1-1-2008	Amend	2-1-2008
735-040-0050	6-23-2008	Repeal	8-1-2008	735-062-0390	1-1-2008	Adopt	2-1-2008
735-040-0080	1-1-2008	Amend(T)	2-1-2008	735-064-0005	2-4-2008	Amend	3-1-2008
735-040-0080	6-23-2008	Amend	8-1-2008	735-064-0020	7-1-2008	Amend	8-1-2008
735-040-0080(T)	6-23-2008	Repeal	8-1-2008	735-064-0040	1-1-2008	Amend	2-1-2008
735-040-0090	1-1-2008	Amend(T)	2-1-2008	735-064-0070	1-1-2008	Amend	1-1-2008
735-040-0090	6-23-2008	Amend	8-1-2008	735-064-0100	1-25-2008	Amend	3-1-2008
735-040-0090(T)	6-23-2008	Repeal	8-1-2008	735-064-0220	1-1-2008	Amend	2-1-2008
735-040-0100	1-1-2008	Amend(T)	2-1-2008	735-064-0230	1-25-2008	Amend	3-1-2008
735-040-0100	6-23-2008	Amend	8-1-2008	735-070-0000	7-1-2008	Amend	8-1-2008
735-040-0100(T)	6-23-2008	Repeal	8-1-2008	735-070-0004	7-1-2008	Amend	8-1-2008
735-046-0000	6-23-2008	Amend	8-1-2008	735-070-0010	2-4-2008	Amend(T)	3-1-2008
735-046-0000(T)	6-23-2008	Repeal	8-1-2008	735-070-0010	7-1-2008	Amend	8-1-2008
735-046-0010	1-1-2008	Amend(T)	2-1-2008	735-070-0020	7-1-2008	Amend	8-1-2008
735-046-0010	6-23-2008	Amend	8-1-2008	735-070-0080	1-1-2008	Amend	1-1-2008
735-046-0010(T)	6-23-2008	Repeal	8-1-2008	735-070-0190	12-24-2007	Amend	2-1-2008
735-046-0050	1-1-2008	Amend(T)	2-1-2008	735-072-0035	1-1-2008	Amend	2-1-2008
735-046-0050	6-23-2008	Amend	8-1-2008	735-074-0080	1-1-2008	Amend	2-1-2008
735-046-0050(T)	6-23-2008	Repeal	8-1-2008	735-074-0140	1-1-2008	Amend	2-1-2008
735-050-0000	2-4-2008	Amend	3-1-2008	735-074-0180	1-1-2008	Amend	2-1-2008
735-050-0060	2-4-2008	Amend	3-1-2008	735-074-0260	1-1-2008	Am. & Ren.	2-1-2008
735-050-0062	2-4-2008	Amend	3-1-2008	735-074-0270	1-1-2008	Am. & Ren.	2-1-2008
735-050-0064	2-4-2008	Amend	3-1-2008	735-074-0280	1-1-2008	Am. & Ren.	2-1-2008
735-060-0120	1-1-2008	Amend	2-1-2008	735-074-0290	1-1-2008	Am. & Ren.	2-1-2008
735-062-0000	1-1-2008	Amend	2-1-2008	735-075-0005	5-19-2008	Amend	7-1-2008
735-062-0000	2-4-2008	Amend(T)	3-1-2008	735-076-0002	1-1-2008	Amend	2-1-2008
735-062-0000	7-1-2008	Am. & Ren.	8-1-2008	735-076-0005	2-22-2008	Amend(T)	4-1-2008
735-062-0002	7-1-2008	Adopt	8-1-2008	735-076-0005(T)	5-19-2008	Repeal	7-1-2008
735-062-0005	2-4-2008	Amend(T)	3-1-2008	735-076-0007	1-1-2008	Amend	2-1-2008
735-062-0005	7-1-2008	Amend	8-1-2008	735-076-0018	1-1-2008	Amend	2-1-2008
735-062-0010	2-4-2008	Amend(T)	3-1-2008	735-076-0020	1-1-2008	Amend	2-1-2008
735-062-0010	7-1-2008	Amend	8-1-2008	735-076-0035	1-1-2008	Amend	2-1-2008
735-062-0015	7-1-2008	Adopt	8-1-2008	735-080-0010	1-1-2008	Repeal	2-1-2008
735-062-0016	7-1-2008	Adopt	8-1-2008	735-080-0020	1-1-2008	Amend	2-1-2008
735-062-0020	2-4-2008	Amend(T)	3-1-2008	735-080-0030	1-1-2008	Repeal	2-1-2008
735-062-0020	7-1-2008	Amend	8-1-2008	735-080-0040	1-1-2008	Amend	2-1-2008
735-062-0021	2-4-2008	Adopt(T)	3-1-2008	735-080-0060	7-1-2008	Amend	8-1-2008
735-062-0021	7-1-2008	Repeal	8-1-2008	735-080-0070	7-1-2008	Amend	8-1-2008
735-062-0030	2-4-2008	Amend	3-1-2008	735-080-0080	1-1-2008	Amend	2-1-2008
735-062-0030	2-4-2008	Amend(T)	3-1-2008	735-090-0000	12-24-2007	Amend	2-1-2008
735-062-0030	7-1-2008	Amend	8-1-2008	735-090-0020	12-24-2007	Amend	2-1-2008
735-062-0032	7-1-2008	Adopt	8-1-2008	735-090-0051	12-24-2007	Amend	2-1-2008
735-062-0033	7-1-2008	Adopt	8-1-2008	735-090-0120	12-24-2007	Amend	2-1-2008
735-062-0050	1-1-2008	Amend	2-1-2008	735-090-0130	12-24-2007	Amend	2-1-2008
735-062-0073	1-1-2008	Amend	2-1-2008	735-152-0000	1-1-2008	Amend(T)	2-1-2008
735-062-0090	1-1-2008	Amend	2-1-2008	735-152-0000	6-23-2008	Amend	8-1-2008
735-062-0090	2-4-2008	Amend(T)	3-1-2008	735-152-0000(T)	6-23-2008	Repeal	8-1-2008
735-062-0090	2-22-2008	Amend(T)	4-1-2008	735-152-0040	1-1-2008	Amend(T)	2-1-2008
735-062-0090	4-24-2008	Amend	6-1-2008	735-152-0040	6-23-2008	Amend	8-1-2008
735-062-0090	7-1-2008	Amend	8-1-2008	735-152-0040(T)	6-23-2008	Repeal	8-1-2008
735-062-0090(T)	4-24-2008	Repeal	6-1-2008	735-152-0050	1-1-2008	Amend(T)	2-1-2008
735-062-0110	2-4-2008	Amend(T)	3-1-2008	735-152-0050	6-23-2008	Amend	8-1-2008
735-062-0110	7-1-2008	Amend	8-1-2008	735-152-0050(T)	6-23-2008	Repeal	8-1-2008
735-062-0120	7-1-2008	Amend	8-1-2008	735-152-0060	1-1-2008	Amend(T)	2-1-2008

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735-152-0060(T)	6-23-2008	Repeal	8-1-2008	740-200-0040	7-1-2008	Amend	8-1-2008
735-158-0000	11-30-2007	Amend	1-1-2008	740-300-0140	3-21-2008	Am. & Ren.	5-1-2008
735-160-0115	12-24-2007	Amend	2-1-2008	800-010-0015	2-1-2008	Amend	2-1-2008
736-002-0010	2-15-2008	Amend	3-1-2008	800-010-0017	2-1-2008	Amend	2-1-2008
736-002-0020	2-15-2008	Amend	3-1-2008	800-010-0025	2-1-2008	Amend	2-1-2008
736-002-0030	2-15-2008	Amend	3-1-2008	800-010-0030	2-1-2008	Amend	2-1-2008
736-002-0032	2-15-2008	Adopt	3-1-2008	800-010-0041	2-1-2008	Amend	2-1-2008
736-002-0038	2-15-2008	Adopt	3-1-2008	800-015-0005	2-1-2008	Amend	2-1-2008
736-002-0040	2-15-2008	Repeal	3-1-2008	800-015-0010	2-1-2008	Amend	2-1-2008
736-002-0042	2-15-2008	Adopt	3-1-2008	800-015-0015	2-1-2008	Adopt	2-1-2008
736-002-0050	2-15-2008	Adopt	3-1-2008	800-015-0030	2-1-2008	Amend	2-1-2008
736-002-0052	2-15-2008	Adopt	3-1-2008	800-020-0015	2-1-2008	Amend	2-1-2008
736-002-0058	2-15-2008	Adopt	3-1-2008	800-020-0020	2-1-2008	Amend	2-1-2008
736-002-0060	2-15-2008	Repeal	3-1-2008	800-020-0022	2-1-2008	Amend	2-1-2008
736-002-0070	2-15-2008	Amend	3-1-2008	800-020-0025	2-1-2008	Amend	2-1-2008
736-002-0080	2-15-2008	Repeal	3-1-2008	800-020-0026	2-1-2008	Amend	2-1-2008
736-002-0082	2-15-2008	Adopt	3-1-2008	800-020-0030	2-1-2008	Amend	2-1-2008
736-002-0090	2-15-2008	Repeal	3-1-2008	800-020-0031	2-1-2008	Amend	2-1-2008
736-002-0092	2-15-2008	Adopt	3-1-2008	800-020-0035	2-1-2008	Amend	2-1-2008
736-002-0100	2-15-2008	Repeal	3-1-2008	800-025-0020	2-1-2008	Amend	2-1-2008
736-002-0102	2-15-2008	Adopt	3-1-2008	800-025-0023	2-1-2008	Amend	2-1-2008
736-002-0150	2-15-2008	Adopt	3-1-2008	800-025-0025	2-1-2008	Amend	2-1-2008
736-002-0160	2-15-2008	Adopt	3-1-2008	800-025-0030	2-1-2008	Amend	2-1-2008
736-006-0100	3-1-2008	Amend	3-1-2008	800-025-0060	2-1-2008	Amend	2-1-2008
736-006-0110	3-1-2008	Amend(T)	3-1-2008	800-025-0070	2-1-2008	Amend	2-1-2008
736-006-0110	5-15-2008	Amend	6-1-2008	800-030-0025	2-1-2008	Amend	2-1-2008
736-006-0115	3-1-2008	Amend	3-1-2008	800-030-0050	2-1-2008	Amend	2-1-2008
736-006-0125	3-1-2008	Amend	3-1-2008	801-001-0035	1-1-2008	Amend	2-1-2008
736-006-0140	3-1-2008	Amend	3-1-2008	801-010-0340	1-1-2008	Amend	2-1-2008
736-006-0150	3-1-2008	Amend	3-1-2008	801-030-0010	1-1-2008	Amend	2-1-2008
736-040-0005	5-15-2008	Amend	6-1-2008	801-030-0015	1-1-2008	Amend	2-1-2008
736-040-0015	5-15-2008	Amend	6-1-2008	801-030-0020	1-1-2008	Amend	2-1-2008
736-040-0020	5-15-2008	Amend	6-1-2008	801-040-0030	1-1-2008	Amend	2-1-2008
736-040-0035	5-15-2008	Amend	6-1-2008	804-022-0000	7-7-2008	Amend	8-1-2008
736-040-0041	5-15-2008	Amend	6-1-2008	804-022-0010	2-4-2008	Amend	3-1-2008
736-040-0042	5-15-2008	Amend	6-1-2008	804-025-0020	2-4-2008	Amend	3-1-2008
736-040-0043	5-15-2008	Amend	6-1-2008	804-027-0005	7-7-2008	Adopt	8-1-2008
736-040-0044	5-15-2008	Amend	6-1-2008	804-030-0005	7-7-2008	Am. & Ren.	8-1-2008
736-040-0046	5-15-2008	Amend	6-1-2008	804-030-0010	7-7-2008	Am. & Ren.	8-1-2008
736-040-0056	5-15-2008	Amend	6-1-2008	804-030-0015	2-4-2008	Am. & Ren.	3-1-2008
736-040-0070	5-15-2008	Amend	6-1-2008	804-030-0020	3-20-2008	Amend	5-1-2008
736-040-0071	5-15-2008	Amend	6-1-2008	804-030-0035	2-4-2008	Am. & Ren.	3-1-2008
736-040-0072	5-15-2008	Amend	6-1-2008	804-035-0010	3-20-2008	Amend	5-1-2008
736-040-0073	5-15-2008	Amend	6-1-2008	804-040-0000	3-20-2008	Amend	5-1-2008
736-040-0080	5-15-2008	Amend	6-1-2008	804-050-0001	7-7-2008	Am. & Ren.	8-1-2008
736-040-0085	5-15-2008	Amend	6-1-2008	804-050-0001	7-7-2008	Am. & Ren.	8-1-2008
736-040-0090	5-15-2008	Amend	6-1-2008	804-050-0001	7-7-2008	Am. & Ren.	8-1-2008
736-054-0005	2-15-2008	Amend	3-1-2008	806-010-0010	2-28-2008	Amend	4-1-2008
736-054-0010	2-15-2008	Amend	3-1-2008	806-010-0015	2-28-2008	Repeal	4-1-2008
736-054-0015	2-15-2008	Amend	3-1-2008	806-010-0020	2-28-2008	Amend	4-1-2008
736-054-0025	2-15-2008	Amend	3-1-2008	806-010-0033	2-28-2008	Amend	4-1-2008
740-100-0010	4-1-2008	Amend	5-1-2008	806-010-0035	2-28-2008	Amend	4-1-2008
740-100-0060	4-1-2008	Amend	5-1-2008	806-010-0090	7-1-2008	Amend	4-1-2008
740-100-0070	4-1-2008	Amend	5-1-2008	806-010-0105	7-1-2008	Amend	4-1-2008
740-100-0080	4-1-2008	Amend	5-1-2008	806-010-0145	7-1-2008	Amend	4-1-2008
740-100-0090	4-1-2008	Amend	5-1-2008	808-001-0005	4-25-2008	Amend	6-1-2008
740-100-0140	3-21-2008	Am. & Ren.	5-1-2008	808-001-0020	1-1-2008	Amend	2-1-2008
740-110-0010	4-1-2008	Amend	5-1-2008	808-001-0020	1-1-2008	Amend	2-1-2008
740-200-0010	7-1-2008	Amend	8-1-2008	808-001-0020	4-11-2008	Amend	5-1-2008

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808-002-0210	1-1-2008	Amend	2-1-2008	808-004-0320	1-1-2008	Amend	2-1-2008
808-002-0220	1-1-2008	Amend	2-1-2008	808-004-0340	1-1-2008	Amend	2-1-2008
808-002-0220	1-1-2008	Amend	2-1-2008	808-004-0340	1-1-2008	Amend	2-1-2008
808-002-0220	4-11-2008	Amend	5-1-2008	808-004-0400	1-1-2008	Amend	2-1-2008
808-002-0280	1-1-2008	Amend	2-1-2008	808-004-0450	1-1-2008	Amend	2-1-2008
808-002-0325	1-1-2008	Amend	2-1-2008	808-004-0530	1-1-2008	Adopt	2-1-2008
808-002-0328	1-1-2008	Amend	2-1-2008	808-004-0540	1-1-2008	Amend	2-1-2008
808-002-0330	1-1-2008	Amend	2-1-2008	808-004-0600	1-1-2008	Amend	2-1-2008
808-002-0500	1-1-2008	Amend	2-1-2008	808-005-0020	1-1-2008	Amend	2-1-2008
808-002-0540	1-1-2008	Amend	2-1-2008	808-005-0020	1-1-2008	Amend	2-1-2008
808-002-0590	1-1-2008	Adopt	2-1-2008	808-005-0020	4-11-2008	Amend	5-1-2008
808-002-0623	6-2-2008	Adopt	7-1-2008	808-009-0360	1-14-2008	Suspend	2-1-2008
808-002-0625	1-1-2008	Adopt	2-1-2008	808-009-0360	3-7-2008	Repeal	4-1-2008
808-002-0665	1-1-2008	Amend	2-1-2008	808-030-0010	1-1-2008	Adopt	2-1-2008
808-002-0734	6-2-2008	Amend	7-1-2008	808-030-0010	6-2-2008	Amend	7-1-2008
808-002-0870	1-1-2008	Amend	2-1-2008	808-030-0020	1-1-2008	Adopt	2-1-2008
808-002-0900	1-1-2008	Amend	2-1-2008	808-030-0030	1-1-2008	Adopt	2-1-2008
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808-003-0010	1-1-2008	Amend	2-1-2008	808-030-0050	1-1-2008	Adopt	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008	808-030-0060	1-1-2008	Adopt	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008	808-030-0070	1-1-2008	Adopt	2-1-2008
808-003-0015	4-11-2008	Amend	5-1-2008	808-040-0010	1-1-2008	Adopt	2-1-2008
808-003-0018	4-11-2008	Amend	5-1-2008	808-040-0020	1-1-2008	Adopt	2-1-2008
808-003-0020	1-1-2008	Amend	2-1-2008	808-040-0025	1-1-2008	Adopt	2-1-2008
808-003-0030	1-1-2008	Amend	2-1-2008	808-040-0030	1-1-2008	Adopt	2-1-2008
808-003-0030	6-2-2008	Amend	7-1-2008	808-040-0040	1-1-2008	Adopt	2-1-2008
808-003-0035	1-1-2008	Amend	2-1-2008	808-040-0050	1-1-2008	Adopt	2-1-2008
808-003-0035	1-1-2008	Amend	2-1-2008	808-040-0060	1-1-2008	Adopt	2-1-2008
808-003-0035	4-11-2008	Amend	5-1-2008	808-040-0070	1-1-2008	Adopt	2-1-2008
808-003-0040	1-1-2008	Amend	2-1-2008	808-040-0080	1-1-2008	Adopt	2-1-2008
808-003-0040	1-1-2008	Amend	2-1-2008	809-030-0025	3-20-2008	Amend	5-1-2008
808-003-0040	4-11-2008	Amend	5-1-2008	811-001-0005	1-31-2008	Amend	1-1-2008
808-003-0045	1-1-2008	Amend	2-1-2008	811-010-0085	11-30-2007	Amend	1-1-2008
808-003-0045	1-1-2008	Amend	2-1-2008	811-010-0086	11-30-2007	Amend	1-1-2008
808-003-0060	1-1-2008	Amend	2-1-2008	811-010-0090	11-30-2007	Amend	1-1-2008
808-003-0090	1-1-2008	Amend	2-1-2008	811-010-0093	11-30-2007	Amend	1-1-2008
808-003-0095	1-1-2008	Amend	2-1-2008	811-015-0010	11-30-2007	Amend	1-1-2008
808-003-0100	1-1-2008	Amend	2-1-2008	811-015-0025	11-30-2007	Amend	1-1-2008
808-003-0105	1-1-2008	Amend	2-1-2008	811-021-0005	11-30-2007	Amend	1-1-2008
808-003-0110	1-1-2008	Amend	2-1-2008	811-030-0020	5-29-2008	Amend	7-1-2008
808-003-0112	1-1-2008	Amend	2-1-2008	812-001-0100	7-1-2008	Amend	7-1-2008
808-003-0125	1-1-2008	Amend	2-1-2008	812-001-0120	5-1-2008	Amend	6-1-2008
808-003-0125	6-2-2008	Amend	7-1-2008	812-001-0140	7-1-2008	Amend	7-1-2008
808-003-0130	1-1-2008	Amend	2-1-2008	812-001-0160	5-1-2008	Amend	6-1-2008
808-003-0130	1-1-2008	Amend	2-1-2008	812-001-0200	1-1-2008	Amend	1-1-2008
808-003-0130	4-11-2008	Amend	5-1-2008	812-001-0200	1-2-2008	Amend(T)	2-1-2008
808-003-0135	1-1-2008	Amend	2-1-2008	812-001-0200	5-1-2008	Amend	6-1-2008
808-003-018	1-1-2008	Amend	2-1-2008	812-001-0200(T)	5-1-2008	Repeal	6-1-2008
808-003-0200	1-1-2008	Amend	2-1-2008	812-001-0240	7-1-2008	Adopt	8-1-2008
808-003-0220	1-1-2008	Amend	2-1-2008	812-001-0500	7-1-2008	Amend	7-1-2008
808-003-0225	1-1-2008	Amend	2-1-2008	812-002-0011	7-1-2008	Amend	7-1-2008
808-003-0230	1-1-2008	Amend	2-1-2008	812-002-0040	7-1-2008	Amend	7-1-2008
808-003-0230	1-1-2008	Amend	2-1-2008	812-002-0140	1-1-2008	Amend	1-1-2008
808-003-0230	4-11-2008	Amend	5-1-2008	812-002-0140	7-1-2008	Amend	7-1-2008
808-003-0235	1-1-2008	Amend	2-1-2008	812-002-0143	1-1-2008	Amend	1-1-2008
808-003-0255	1-1-2008	Amend	2-1-2008	812-002-0143	7-1-2008	Amend	7-1-2008
808-003-0440	1-1-2008	Amend	2-1-2008	812-002-0160	7-1-2008	Amend	7-1-2008
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812-002-0200	7-1-2008	Amend	7-1-2008	812-003-0230	7-1-2008	Amend	4-1-2008
812-002-0260	7-1-2008	Amend	7-1-2008	812-003-0240	1-1-2008	Amend	1-1-2008
812-002-0265	1-1-2008	Adopt	1-1-2008	812-003-0240	7-1-2008	Amend	7-1-2008
812-002-0280	7-1-2008	Amend	7-1-2008	812-003-0250	1-1-2008	Amend	1-1-2008
812-002-0320	7-1-2008	Amend	4-1-2008	812-003-0250	7-1-2008	Amend	7-1-2008
812-002-0345	7-1-2008	Amend	7-1-2008	812-003-0260	1-1-2008	Amend	1-1-2008
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812-002-0420	1-1-2008	Amend	1-1-2008	812-003-0260	7-1-2008	Amend	4-1-2008
812-002-0420	7-1-2008	Amend	7-1-2008	812-003-0260	7-1-2008	Amend	6-1-2008
812-002-0440	7-1-2008	Amend	7-1-2008	812-003-0260	7-1-2008	Amend	8-1-2008
812-002-0443	7-1-2008	Amend	7-1-2008	812-003-0270	1-10-2008	Amend(T)	2-1-2008
812-002-0460	7-1-2008	Amend	7-1-2008	812-003-0270	7-1-2008	Amend	4-1-2008
812-002-0530	7-1-2008	Amend	7-1-2008	812-003-0280	1-1-2008	Amend	1-1-2008
812-002-0533	7-1-2008	Amend	7-1-2008	812-003-0280	7-1-2008	Amend	4-1-2008
812-002-0537	7-1-2008	Amend	7-1-2008	812-003-0290	1-1-2008	Amend	1-1-2008
812-002-0580	1-1-2008	Amend	1-1-2008	812-003-0290	7-1-2008	Amend	4-1-2008
812-002-0630	1-1-2008	Adopt	1-1-2008	812-003-0300	1-1-2008	Amend	1-1-2008
812-002-0630	7-1-2008	Amend	7-1-2008	812-003-0300	7-1-2008	Amend	4-1-2008
812-002-0635	1-1-2008	Adopt	1-1-2008	812-003-0310	1-1-2008	Amend	1-1-2008
812-002-0635	7-1-2008	Amend	7-1-2008	812-003-0310	7-1-2008	Amend	7-1-2008
812-002-0640	1-1-2008	Amend	1-1-2008	812-003-0320	7-1-2008	Amend	7-1-2008
812-002-0640	7-1-2008	Amend	7-1-2008	812-003-0330	7-1-2008	Amend	7-1-2008
812-002-0670	7-1-2008	Amend	7-1-2008	812-003-0340	7-1-2008	Amend	4-1-2008
812-002-0673	7-1-2008	Amend	7-1-2008	812-003-0350	7-1-2008	Amend	7-1-2008
812-002-0675	7-1-2008	Amend	7-1-2008	812-003-0360	7-1-2008	Amend	4-1-2008
812-002-0760	1-1-2008	Amend	1-1-2008	812-003-0370	7-1-2008	Amend	7-1-2008
812-002-0760	7-1-2008	Amend	7-1-2008	812-003-0380	1-1-2008	Amend	1-1-2008
812-002-0780	7-1-2008	Amend	7-1-2008	812-003-0380	7-1-2008	Amend	7-1-2008
812-002-0840	1-1-2008	Repeal	1-1-2008	812-003-0390	7-1-2008	Amend	7-1-2008
812-003-0110	7-1-2008	Amend	7-1-2008	812-003-0400	1-1-2008	Amend	1-1-2008
812-003-0120	7-1-2008	Amend	7-1-2008	812-003-0400	7-1-2008	Amend	7-1-2008
812-003-0130	7-1-2008	Amend	4-1-2008	812-003-0410	7-1-2008	Amend	7-1-2008
812-003-0131	7-1-2008	Adopt	4-1-2008	812-003-0420	7-1-2008	Amend	4-1-2008
812-003-0140	1-10-2008	Amend(T)	2-1-2008	812-003-0430	7-1-2008	Amend	7-1-2008
812-003-0140	7-1-2008	Amend	4-1-2008	812-003-0440	7-1-2008	Amend	4-1-2008
812-003-0150	1-1-2008	Amend	1-1-2008	812-003-0450	7-1-2008	Amend	4-1-2008
812-003-0150	7-1-2008	Amend	8-1-2008	812-004-0110	7-1-2008	Amend	7-1-2008
812-003-0152	7-1-2008	Adopt	4-1-2008	812-004-0110	7-1-2008	Amend	8-1-2008
812-003-0152	7-1-2008	Amend	8-1-2008	812-004-0120	7-1-2008	Amend	7-1-2008
812-003-0153	7-1-2008	Adopt	4-1-2008	812-004-0210	7-1-2008	Amend	7-1-2008
812-003-0153	7-1-2008	Amend	8-1-2008	812-004-0240	1-1-2008	Amend	1-1-2008
812-003-0155	1-1-2008	Adopt	1-1-2008	812-004-0240	7-1-2008	Amend	7-1-2008
812-003-0155	7-1-2008	Amend	4-1-2008	812-004-0250	1-1-2008	Amend	1-1-2008
812-003-0160	1-1-2008	Amend	1-1-2008	812-004-0250	7-1-2008	Amend	7-1-2008
812-003-0160	7-1-2008	Amend	7-1-2008	812-004-0260	1-1-2008	Amend	1-1-2008
812-003-0170	1-1-2008	Amend	1-1-2008	812-004-0260	7-1-2008	Amend	8-1-2008
812-003-0170	7-1-2008	Amend	4-1-2008	812-004-0300	7-1-2008	Amend	7-1-2008
812-003-0171	7-1-2008	Adopt	4-1-2008	812-004-0320	7-1-2008	Amend	8-1-2008
812-003-0175	1-1-2008	Amend	1-1-2008	812-004-0340	7-1-2008	Amend	7-1-2008
812-003-0175	7-1-2008	Amend	4-1-2008	812-004-0400	7-1-2008	Amend	7-1-2008
812-003-0175	7-1-2008	Amend	8-1-2008	812-004-0440	7-1-2008	Amend	7-1-2008
812-003-0180	1-1-2008	Amend	1-1-2008	812-004-0470	7-1-2008	Amend	7-1-2008
812-003-0180	7-1-2008	Amend	7-1-2008	812-004-0520	7-1-2008	Amend	7-1-2008
812-003-0190	1-1-2008	Amend	1-1-2008	812-004-0535	7-1-2008	Amend	7-1-2008
812-003-0190	7-1-2008	Amend	7-1-2008	812-004-0540	7-1-2008	Amend	7-1-2008
812-003-0200	1-1-2008	Amend	1-1-2008	812-004-0550	7-1-2008	Amend	7-1-2008
812-003-0200	7-1-2008	Amend	4-1-2008	812-004-0550	7-1-2008	Amend	8-1-2008
812-003-0210	7-1-2008	Amend	7-1-2008	812-004-0560	1-1-2008	Amend	1-1-2008

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812-004-0590	1-1-2008	Amend	1-1-2008	812-010-0160	7-1-2008	Amend	7-1-2008
812-004-0590	7-1-2008	Amend	7-1-2008	812-010-0400	7-1-2008	Amend	7-1-2008
812-004-0600	1-1-2008	Amend	1-1-2008	812-010-0420	1-1-2008	Amend	1-1-2008
812-004-0600	7-1-2008	Amend	4-1-2008	812-010-0420	7-1-2008	Amend	7-1-2008
812-004-0600	7-1-2008	Amend	8-1-2008	812-010-0425	7-1-2008	Amend	7-1-2008
812-005-0100	7-1-2008	Amend	7-1-2008	812-010-0470	1-1-2008	Amend	1-1-2008
812-005-0130	7-1-2008	Amend	8-1-2008	812-010-0470	7-1-2008	Amend	7-1-2008
812-005-0140	7-1-2008	Amend	7-1-2008	812-012-0110	1-1-2008	Adopt	1-1-2008
812-005-0160	7-1-2008	Amend	7-1-2008	812-012-0110	7-1-2008	Amend	7-1-2008
812-005-0170	7-1-2008	Amend	7-1-2008	812-012-0130	1-1-2008	Adopt	1-1-2008
812-005-0200	1-1-2008	Amend	1-1-2008	812-012-0130	1-18-2008	Amend(T)	3-1-2008
812-005-0200	7-1-2008	Amend	7-1-2008	812-012-0130	5-1-2008	Amend	6-1-2008
812-005-0210	1-1-2008	Amend	1-1-2008	812-012-0130(T)	5-1-2008	Repeal	6-1-2008
812-005-0210	7-1-2008	Amend	7-1-2008	813-110-0005	4-11-2008	Amend	5-1-2008
812-005-0250	1-1-2008	Amend	1-1-2008	813-110-0005(T)	4-11-2008	Repeal	5-1-2008
812-005-0250	7-1-2008	Amend	7-1-2008	813-110-0010	4-11-2008	Amend	5-1-2008
812-005-0270	1-1-2008	Adopt	1-1-2008	813-110-0010(T)	4-11-2008	Repeal	5-1-2008
812-005-0270	7-1-2008	Amend	4-1-2008	813-110-0013	4-11-2008	Adopt	5-1-2008
812-005-0280	7-1-2008	Adopt	8-1-2008	813-110-0013(T)	4-11-2008	Repeal	5-1-2008
812-005-0500	7-1-2008	Amend	8-1-2008	813-110-0015	4-11-2008	Amend	5-1-2008
812-005-0800	1-2-2008	Amend(T)	2-1-2008	813-110-0015(T)	4-11-2008	Repeal	5-1-2008
812-005-0800	7-1-2008	Amend	4-1-2008	813-110-0020	4-11-2008	Amend	5-1-2008
812-005-0800	7-1-2008	Amend	8-1-2008	813-110-0020(T)	4-11-2008	Repeal	5-1-2008
812-006-0100	7-1-2008	Amend	7-1-2008	813-110-0021	4-11-2008	Amend	5-1-2008
812-006-0150	7-1-2008	Amend	7-1-2008	813-110-0021(T)	4-11-2008	Repeal	5-1-2008
812-006-0200	7-1-2008	Amend	7-1-2008	813-110-0022	4-11-2008	Amend	5-1-2008
812-006-0250	7-1-2008	Amend	7-1-2008	813-110-0022(T)	4-11-2008	Repeal	5-1-2008
812-006-0300	7-1-2008	Amend	7-1-2008	813-110-0025	4-11-2008	Amend	5-1-2008
812-006-0350	7-1-2008	Amend	7-1-2008	813-110-0025(T)	4-11-2008	Repeal	5-1-2008
812-006-0400	7-1-2008	Amend	7-1-2008	813-110-0030	4-11-2008	Amend	5-1-2008
812-006-0450	7-1-2008	Amend	8-1-2008	813-110-0030(T)	4-11-2008	Repeal	5-1-2008
812-007-0040	7-1-2008	Amend	4-1-2008	813-110-0035	4-11-2008	Amend	5-1-2008
812-008-0030	7-1-2008	Amend	4-1-2008	813-110-0035(T)	4-11-2008	Repeal	5-1-2008
812-008-0040	1-1-2008	Amend	1-1-2008	813-120-0001	1-28-2008	Amend	3-1-2008
812-008-0040	7-1-2008	Amend	4-1-2008	813-120-0010	1-28-2008	Amend	3-1-2008
812-008-0060	1-1-2008	Amend	1-1-2008	813-120-0020	1-28-2008	Amend	3-1-2008
812-008-0070	1-1-2008	Amend	1-1-2008	813-120-0030	1-28-2008	Am. & Ren.	3-1-2008
812-008-0110	1-1-2008	Amend	1-1-2008	813-120-0040	1-28-2008	Amend	3-1-2008
812-008-0201	7-1-2008	Amend	8-1-2008	813-120-0050	1-28-2008	Amend	3-1-2008
812-009-0020	7-1-2008	Amend	7-1-2008	813-120-0060	1-28-2008	Amend	3-1-2008
812-009-0050	7-1-2008	Amend	7-1-2008	813-120-0070	1-28-2008	Amend	3-1-2008
812-009-0070	7-1-2008	Amend	7-1-2008	813-120-0080	1-28-2008	Amend	3-1-2008
812-009-0090	7-1-2008	Amend	7-1-2008	813-120-0090	1-28-2008	Amend	3-1-2008
812-009-0140	1-1-2008	Amend	1-1-2008	813-120-0100	1-28-2008	Am. & Ren.	3-1-2008
812-009-0140	7-1-2008	Amend	7-1-2008	813-120-0110	1-28-2008	Amend	3-1-2008
812-009-0160	7-1-2008	Amend	7-1-2008	813-120-0120	1-28-2008	Amend	3-1-2008
812-009-0200	7-1-2008	Amend	7-1-2008	813-120-0130	1-28-2008	Amend	3-1-2008
812-009-0220	7-1-2008	Amend	7-1-2008	813-120-0140	1-28-2008	Amend	3-1-2008
812-009-0320	7-1-2008	Amend	7-1-2008	813-140-0010	12-18-2007	Amend(T)	2-1-2008
812-009-0340	7-1-2008	Amend	7-1-2008	813-140-0010	6-23-2008	Amend	8-1-2008
812-009-0400	5-1-2008	Amend	6-1-2008	813-140-0050	12-18-2007	Amend(T)	2-1-2008
812-009-0420	5-1-2008	Amend	6-1-2008	813-140-0050	6-23-2008	Amend	8-1-2008
812-009-0430	7-1-2008	Amend	7-1-2008	813-140-0090	12-18-2007	Amend(T)	2-1-2008
812-009-0435	5-1-2008	Adopt	6-1-2008	813-140-0090	6-23-2008	Amend	8-1-2008
812-010-0020	7-1-2008	Amend	7-1-2008	813-140-0095	12-18-2007	Adopt(T)	2-1-2008
812-010-0060	7-1-2008	Amend	7-1-2008	813-140-0096	6-23-2008	Adopt	8-1-2008
812-010-0080	7-1-2008	Amend	7-1-2008	813-220-0001	3-31-2008	Amend	5-1-2008
812-010-0090	7-1-2008	Amend	7-1-2008	813-220-0005	3-31-2008	Amend	5-1-2008
812-010-0100	7-1-2008	Amend	7-1-2008	813-220-0010	3-31-2008	Amend	5-1-2008

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813-220-0020	3-31-2008	Amend	5-1-2008	833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
813-220-0030	3-31-2008	Amend	5-1-2008	833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
813-220-0050	3-31-2008	Amend	5-1-2008	833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
813-220-0060	3-31-2008	Amend	5-1-2008	833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
813-250-0000	4-11-2008	Amend	5-1-2008	833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
813-250-0010	4-11-2008	Amend	5-1-2008	834-010-0030	4-9-2008	Amend	5-1-2008
813-250-0020	4-11-2008	Amend	5-1-2008	836-009-0007	12-11-2007	Amend(T)	1-1-2008
813-250-0030	4-11-2008	Amend	5-1-2008	836-009-0007	6-2-2008	Amend	7-1-2008
813-250-0040	4-11-2008	Amend	5-1-2008	836-011-0100	7-1-2008	Amend	8-1-2008
813-300-0010	3-18-2008	Amend	5-1-2008	836-011-0110	7-1-2008	Amend	8-1-2008
813-300-0010(T)	3-18-2008	Repeal	5-1-2008	836-011-0120	7-1-2008	Amend	8-1-2008
813-300-0020	3-18-2008	Amend	5-1-2008	836-011-0130	7-1-2008	Amend	8-1-2008
813-300-0020(T)	3-18-2008	Repeal	5-1-2008	836-011-0140	7-1-2008	Amend	8-1-2008
813-300-0030	3-18-2008	Amend	5-1-2008	836-011-0150	7-1-2008	Amend	8-1-2008
813-300-0030(T)	3-18-2008	Repeal	5-1-2008	836-011-0160	7-1-2008	Amend	8-1-2008
813-300-0060	3-18-2008	Amend	5-1-2008	836-011-0180	7-1-2008	Amend	8-1-2008
813-300-0060(T)	3-18-2008	Repeal	5-1-2008	836-011-0190	7-1-2008	Amend	8-1-2008
813-300-0080	3-18-2008	Amend	5-1-2008	836-011-0200	7-1-2008	Amend	8-1-2008
813-300-0080(T)	3-18-2008	Repeal	5-1-2008	836-011-0210	7-1-2008	Amend	8-1-2008
813-300-0100	3-18-2008	Amend	5-1-2008	836-011-0220	7-1-2008	Amend	8-1-2008
813-300-0100(T)	3-18-2008	Repeal	5-1-2008	836-011-0223	7-1-2008	Adopt	8-1-2008
813-300-0120	3-18-2008	Amend	5-1-2008	836-011-0225	7-1-2008	Adopt	8-1-2008
813-300-0120(T)	3-18-2008	Repeal	5-1-2008	836-011-0227	7-1-2008	Adopt	8-1-2008
817-010-0065	6-1-2008	Amend	7-1-2008	836-011-0235	7-1-2008	Adopt	8-1-2008
817-015-0050	6-1-2008	Amend	7-1-2008	836-024-0056	7-1-2008	Repeal	8-1-2008
817-015-0065	6-1-2008	Amend	7-1-2008	836-024-0061	7-1-2008	Repeal	8-1-2008
817-015-0070	6-1-2008	Adopt	7-1-2008	836-042-0045	4-7-2008	Amend	5-1-2008
818-001-0087	11-30-2007	Amend	1-1-2008	836-043-0068	4-7-2008	Amend	5-1-2008
818-012-0030	11-30-2007	Amend	1-1-2008	836-050-0300	6-30-2008	Adopt	8-1-2008
818-021-0060	11-30-2007	Amend	1-1-2008	836-050-0305	6-30-2008	Adopt	8-1-2008
818-021-0070	11-30-2007	Amend	1-1-2008	836-052-0500	1-1-2008	Amend	1-1-2008
818-035-0030	11-30-2007	Amend	1-1-2008	836-052-0508	1-1-2008	Adopt	1-1-2008
818-035-0040	11-30-2007	Amend	1-1-2008	836-052-0516	1-1-2008	Amend	1-1-2008
818-035-0065	11-30-2007	Amend	1-1-2008	836-052-0526	1-1-2008	Amend	1-1-2008
818-042-0040	11-30-2007	Amend	1-1-2008	836-052-0531	1-1-2008	Adopt	1-1-2008
818-042-0060	11-30-2007	Amend	1-1-2008	836-052-0546	1-1-2008	Amend	1-1-2008
818-042-0095	11-30-2007	Adopt	1-1-2008	836-052-0556	1-1-2008	Amend	1-1-2008
820-010-0010	7-9-2008	Amend	8-1-2008	836-052-0566	1-1-2008	Amend	1-1-2008
820-010-0225	7-9-2008	Amend	8-1-2008	836-052-0576	1-1-2008	Amend	1-1-2008
820-010-0226	7-9-2008	Amend	8-1-2008	836-052-0616	1-1-2008	Amend	1-1-2008
820-010-0236	3-12-2008	Adopt	4-1-2008	836-052-0626	1-1-2008	Amend	1-1-2008
820-010-0300	3-12-2008	Amend	4-1-2008	836-052-0636	1-1-2008	Amend	1-1-2008
820-010-0305	3-12-2008	Amend	4-1-2008	836-052-0639	1-1-2008	Adopt	1-1-2008
820-010-0325	3-12-2008	Amend	4-1-2008	836-052-0656	1-1-2008	Amend	1-1-2008
820-010-0415	3-12-2008	Amend	4-1-2008	836-052-0666	1-1-2008	Amend	1-1-2008
820-010-0425	3-12-2008	Amend	4-1-2008	836-052-0676	1-1-2008	Amend	1-1-2008
820-010-0427	3-12-2008	Amend	4-1-2008	836-052-0696	1-1-2008	Amend	1-1-2008
820-010-0440	7-9-2008	Amend	8-1-2008	836-052-0700	1-1-2008	Am. & Ren.	1-1-2008
820-010-0450	3-12-2008	Amend	4-1-2008	836-052-0706	1-1-2008	Amend	1-1-2008
820-010-0450	7-9-2008	Amend	8-1-2008	836-052-0726	1-1-2008	Amend	1-1-2008
820-010-0465	7-9-2008	Amend	8-1-2008	836-052-0736	1-1-2008	Amend	1-1-2008
820-010-0520	7-9-2008	Amend	8-1-2008	836-052-0738	1-1-2008	Adopt	1-1-2008
820-010-0605	3-12-2008	Amend	4-1-2008	836-052-0740	1-1-2008	Adopt	1-1-2008
820-010-0620	7-9-2008	Amend	8-1-2008	836-052-0746	1-1-2008	Amend	1-1-2008
820-015-0010	7-9-2008	Amend	8-1-2008	836-052-0756	1-1-2008	Amend	1-1-2008
833-020-0050	6-1-2008	Amend(T)	7-1-2008	836-052-0766	1-1-2008	Amend	1-1-2008
833-025-0050	6-1-2008	Amend(T)	7-1-2008	836-052-0776	1-1-2008	Amend	1-1-2008
833-025-0060	6-1-2008	Amend(T)	7-1-2008	836-052-0786	1-1-2008	Amend	1-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008	836-052-1000	1-1-2008	Adopt	2-1-2008

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836-053-0021	2-11-2008	Amend	3-1-2008	837-039-0050	7-2-2008	Amend	8-1-2008
836-053-0026	2-11-2008	Repeal	3-1-2008	837-039-0055	7-2-2008	Amend	8-1-2008
836-053-0030	2-11-2008	Amend	3-1-2008	837-039-0060	7-2-2008	Amend	8-1-2008
836-053-0040	2-11-2008	Amend	3-1-2008	837-039-0070	7-2-2008	Amend	8-1-2008
836-053-0050	2-11-2008	Amend	3-1-2008	837-039-0080	7-2-2008	Amend	8-1-2008
836-053-0060	2-11-2008	Amend	3-1-2008	837-039-0110	7-2-2008	Amend	8-1-2008
836-053-0065	2-11-2008	Amend	3-1-2008	837-039-0120	7-2-2008	Adopt	8-1-2008
836-053-0065(T)	2-11-2008	Repeal	3-1-2008	839-001-0150	1-1-2008	Amend	2-1-2008
836-053-0081	4-18-2008	Adopt	6-1-2008	839-001-0153	1-1-2008	Amend	2-1-2008
836-053-0910	12-21-2007	Amend(T)	2-1-2008	839-001-0157	1-1-2008	Repeal	2-1-2008
836-053-0910	6-18-2008	Amend	8-1-2008	839-001-0160	1-1-2008	Amend	2-1-2008
836-053-1400	4-18-2008	Amend	6-1-2008	839-001-0495	1-1-2008	Adopt	2-1-2008
836-054-0050	1-16-2008	Repeal	3-1-2008	839-001-0496	1-1-2008	Adopt	2-1-2008
836-054-0055	1-16-2008	Repeal	3-1-2008	839-001-0740	1-1-2008	Amend	2-1-2008
836-054-0060	1-16-2008	Repeal	3-1-2008	839-001-0760	1-1-2008	Amend	2-1-2008
836-054-0065	1-16-2008	Repeal	3-1-2008	839-002-0015	1-1-2008	Adopt	2-1-2008
836-071-0130	12-11-2007	Amend(T)	1-1-2008	839-002-0020	1-1-2008	Adopt	2-1-2008
836-071-0130	6-2-2008	Amend	7-1-2008	839-002-0025	1-1-2008	Adopt	2-1-2008
836-071-0135	12-11-2007	Amend(T)	1-1-2008	839-002-0030	1-1-2008	Adopt	2-1-2008
836-071-0135	6-2-2008	Amend	7-1-2008	839-002-0035	1-1-2008	Adopt	2-1-2008
836-071-0145	12-11-2007	Amend(T)	1-1-2008	839-002-0040	1-1-2008	Adopt	2-1-2008
836-071-0145	6-2-2008	Amend	7-1-2008	839-002-0045	1-1-2008	Adopt	2-1-2008
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836-200-0110	4-7-2008	Adopt	5-1-2008	839-002-0055	1-1-2008	Adopt	2-1-2008
836-200-0120	4-7-2008	Adopt	5-1-2008	839-002-0060	1-1-2008	Adopt	2-1-2008
836-200-0130	4-7-2008	Adopt	5-1-2008	839-002-0065	1-1-2008	Adopt	2-1-2008
836-200-0140	4-7-2008	Adopt	5-1-2008	839-002-0070	1-1-2008	Adopt	2-1-2008
836-200-0200	4-14-2008	Adopt	5-1-2008	839-002-0080	1-1-2008	Adopt	2-1-2008
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836-200-0215	4-14-2008	Adopt	5-1-2008	839-003-0005	3-25-2008	Amend(T)	5-1-2008
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837-020-0035	5-1-2008	Amend	5-1-2008	839-003-0040	3-25-2008	Amend(T)	5-1-2008
837-020-0115	11-30-2007	Amend(T)	1-1-2008	839-003-0045	3-25-2008	Amend(T)	5-1-2008
837-020-0115	5-1-2008	Amend	5-1-2008	839-003-0050	3-25-2008	Amend(T)	5-1-2008
837-035-0000	11-16-2007	Adopt	1-1-2008	839-003-0055	1-1-2008	Amend	2-1-2008
837-035-0020	11-16-2007	Adopt	1-1-2008	839-003-0055	3-25-2008	Amend(T)	5-1-2008
837-035-0040	11-16-2007	Adopt	1-1-2008	839-003-0060	1-1-2008	Amend	2-1-2008
837-035-0060	11-16-2007	Adopt	1-1-2008	839-003-0060	3-25-2008	Amend(T)	5-1-2008
837-035-0080	11-16-2007	Adopt	1-1-2008	839-003-0065	3-25-2008	Amend(T)	5-1-2008
837-035-0100	11-16-2007	Adopt	1-1-2008	839-003-0070	3-25-2008	Amend(T)	5-1-2008
837-035-0120	11-16-2007	Adopt	1-1-2008	839-003-0080	1-1-2008	Amend	2-1-2008
837-035-0140	11-16-2007	Adopt	1-1-2008	839-003-0080	3-25-2008	Amend(T)	5-1-2008
837-035-0160	11-16-2007	Adopt	1-1-2008	839-003-0085	3-25-2008	Amend(T)	5-1-2008
837-035-0180	11-16-2007	Adopt	1-1-2008	839-003-0090	1-1-2008	Amend	2-1-2008
837-035-0200	11-16-2007	Adopt	1-1-2008	839-003-0090	3-25-2008	Amend(T)	5-1-2008
837-035-0220	11-16-2007	Adopt	1-1-2008	839-003-0095	3-25-2008	Amend(T)	5-1-2008
837-035-0240	11-16-2007	Adopt	1-1-2008	839-003-0100	3-25-2008	Amend(T)	5-1-2008
837-035-0260	11-16-2007	Adopt	1-1-2008	839-003-0200	1-1-2008	Adopt	2-1-2008
837-035-0280	11-16-2007	Adopt	1-1-2008	839-003-0200	3-25-2008	Amend(T)	5-1-2008
837-035-0300	11-16-2007	Adopt	1-1-2008	839-003-0205	1-1-2008	Adopt	2-1-2008
837-035-0320	11-16-2007	Adopt	1-1-2008	839-003-0205	3-25-2008	Amend(T)	5-1-2008
837-035-0340	11-16-2007	Adopt	1-1-2008	839-003-0210	1-1-2008	Adopt	2-1-2008
837-039-0001	7-2-2008	Amend	8-1-2008	839-003-0210	3-25-2008	Amend(T)	5-1-2008
837-039-0003	7-2-2008	Amend	8-1-2008	839-003-0215	1-1-2008	Adopt	2-1-2008
837-039-0010	7-2-2008	Amend	8-1-2008	839-003-0215	3-25-2008	Amend(T)	5-1-2008

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839-003-0220	3-25-2008	Amend(T)	5-1-2008	839-009-0325	1-1-2008	Adopt	2-1-2008
839-003-0225	1-1-2008	Adopt	2-1-2008	839-009-0330	1-1-2008	Adopt	2-1-2008
839-003-0225	3-25-2008	Amend(T)	5-1-2008	839-009-0335	1-1-2008	Adopt	2-1-2008
839-003-0230	1-1-2008	Adopt	2-1-2008	839-009-0340	1-1-2008	Adopt	2-1-2008
839-003-0230	3-25-2008	Amend(T)	5-1-2008	839-009-0345	1-1-2008	Adopt	2-1-2008
839-003-0235	1-1-2008	Adopt	2-1-2008	839-009-0350	1-1-2008	Adopt	2-1-2008
839-003-0235	3-25-2008	Amend(T)	5-1-2008	839-009-0355	1-1-2008	Adopt	2-1-2008
839-003-0240	1-1-2008	Adopt	2-1-2008	839-009-0360	1-1-2008	Adopt	2-1-2008
839-003-0240	3-25-2008	Amend(T)	5-1-2008	839-009-0362	1-1-2008	Adopt	2-1-2008
839-003-0245	1-1-2008	Adopt	2-1-2008	839-009-0363	1-1-2008	Adopt	2-1-2008
839-003-0245	3-25-2008	Amend(T)	5-1-2008	839-009-0365	1-1-2008	Adopt	2-1-2008
839-005-0000	1-1-2008	Amend	2-1-2008	839-010-0000	1-1-2008	Amend	2-1-2008
839-005-0000	3-25-2008	Amend(T)	5-1-2008	839-010-0010	1-1-2008	Amend	2-1-2008
839-005-0003	1-1-2008	Amend	2-1-2008	839-010-0020	1-1-2008	Amend	2-1-2008
839-005-0003	3-25-2008	Amend(T)	5-1-2008	839-010-0040	1-1-2008	Amend	2-1-2008
839-005-0010	1-1-2008	Amend	2-1-2008	839-010-0100	1-1-2008	Amend	2-1-2008
839-005-0010	3-25-2008	Amend(T)	5-1-2008	839-010-0110	1-1-2008	Repeal	2-1-2008
839-005-0016	1-1-2008	Adopt	2-1-2008	839-015-0140	1-1-2008	Amend	2-1-2008
839-005-0016	3-25-2008	Amend(T)	5-1-2008	839-015-0141	5-5-2008	Amend(T)	6-1-2008
839-005-0021	1-1-2008	Amend	2-1-2008	839-015-0141	6-23-2008	Amend	8-1-2008
839-005-0026	1-1-2008	Amend	2-1-2008	839-015-0508	1-1-2008	Amend	2-1-2008
839-005-0026	3-25-2008	Amend(T)	5-1-2008	839-015-0509	1-1-2008	Adopt	2-1-2008
839-005-0030	1-1-2008	Amend	2-1-2008	839-015-0605	3-10-2008	Amend	4-1-2008
839-005-0195	1-1-2008	Adopt	2-1-2008	839-020-0012	1-1-2008	Amend	2-1-2008
839-005-0195	3-25-2008	Amend(T)	5-1-2008	839-020-0015	1-1-2008	Amend	2-1-2008
839-005-0200	1-1-2008	Adopt	2-1-2008	839-020-0050	1-1-2008	Amend	2-1-2008
839-005-0200	3-25-2008	Amend(T)	5-1-2008	839-020-0050	7-8-2008	Amend	8-1-2008
839-005-0205	1-1-2008	Adopt	2-1-2008	839-020-0051	1-1-2008	Adopt	2-1-2008
839-005-0205	3-25-2008	Amend(T)	5-1-2008	839-020-0080	1-1-2008	Amend	2-1-2008
839-005-0210	1-1-2008	Adopt	2-1-2008	839-020-0260	1-1-2008	Amend	2-1-2008
839-005-0215	1-1-2008	Adopt	2-1-2008	839-020-1010	1-1-2008	Amend	2-1-2008
839-005-0220	1-1-2008	Adopt	2-1-2008	839-021-0001	7-8-2008	Repeal	8-1-2008
839-005-0220	3-25-2008	Amend(T)	5-1-2008	839-022-0000	7-8-2008	Amend	8-1-2008
839-006-0105	1-1-2008	Amend	2-1-2008	839-022-0005	7-8-2008	Repeal	8-1-2008
839-006-0130	1-1-2008	Amend	2-1-2008	839-022-0010	7-8-2008	Amend	8-1-2008
839-006-0131	1-1-2008	Amend	2-1-2008	839-022-0020	7-8-2008	Repeal	8-1-2008
839-006-0135	1-1-2008	Amend	2-1-2008	839-022-0025	7-8-2008	Repeal	8-1-2008
839-006-0136	1-1-2008	Amend	2-1-2008	839-022-0030	7-8-2008	Repeal	8-1-2008
839-006-0150	1-1-2008	Amend	2-1-2008	839-022-0035	7-8-2008	Repeal	8-1-2008
839-006-0200	6-6-2008	Amend	7-1-2008	839-022-0040	7-8-2008	Repeal	8-1-2008
839-006-0244	6-6-2008	Amend	7-1-2008	839-022-0045	7-8-2008	Repeal	8-1-2008
839-006-0255	6-6-2008	Amend	7-1-2008	839-022-0050	7-8-2008	Repeal	8-1-2008
839-006-0270	6-6-2008	Amend	7-1-2008	839-022-0055	7-8-2008	Repeal	8-1-2008
839-006-0275	6-6-2008	Amend	7-1-2008	839-022-0060	7-8-2008	Repeal	8-1-2008
839-006-0290	6-6-2008	Amend	7-1-2008	839-022-0100	7-8-2008	Adopt	8-1-2008
839-006-0300	6-6-2008	Amend	7-1-2008	839-022-0105	7-8-2008	Adopt	8-1-2008
839-006-0330	6-6-2008	Amend	7-1-2008	839-022-0110	7-8-2008	Adopt	8-1-2008
839-006-0335	6-6-2008	Amend	7-1-2008	839-022-0115	7-8-2008	Adopt	8-1-2008
839-006-0400	1-1-2008	Repeal	2-1-2008	839-022-0120	7-8-2008	Adopt	8-1-2008
839-006-0405	1-1-2008	Repeal	2-1-2008	839-022-0125	7-8-2008	Adopt	8-1-2008
839-006-0410	1-1-2008	Repeal	2-1-2008	839-022-0130	7-8-2008	Adopt	8-1-2008
839-006-0415	1-1-2008	Repeal	2-1-2008	839-022-0135	7-8-2008	Adopt	8-1-2008
839-006-0425	1-1-2008	Repeal	2-1-2008	839-022-0140	7-8-2008	Adopt	8-1-2008
839-007-0075	1-1-2008	Adopt	2-1-2008	839-022-0145	7-8-2008	Adopt	8-1-2008
839-009-0210	1-1-2008	Amend	2-1-2008	839-022-0150	7-8-2008	Adopt	8-1-2008
839-009-0240	1-1-2008	Amend	2-1-2008	839-022-0155	7-8-2008	Adopt	8-1-2008
839-009-0250	1-1-2008	Amend	2-1-2008	839-022-0160	7-8-2008	Adopt	8-1-2008
839-009-0260	1-1-2008	Amend	2-1-2008	839-022-0165	7-8-2008	Adopt	8-1-2008
839-009-0280	1-1-2008	Amend	2-1-2008	839-025-0004	1-1-2008	Amend	2-1-2008

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839-025-0007	1-1-2008	Amend	2-1-2008	845-005-0422	6-29-2008	Repeal	7-1-2008
839-025-0008	1-1-2008	Amend	2-1-2008	845-005-0423	1-1-2008	Suspend	1-1-2008
839-025-0008	3-10-2008	Amend	4-1-2008	845-005-0423	6-29-2008	Repeal	7-1-2008
839-025-0010	1-1-2008	Amend	2-1-2008	845-005-0424	1-1-2008	Amend(T)	1-1-2008
839-025-0013	1-1-2008	Amend	2-1-2008	845-005-0424	6-29-2008	Amend	7-1-2008
839-025-0015	3-10-2008	Amend	4-1-2008	845-005-0425	1-1-2008	Adopt(T)	1-1-2008
839-025-0020	1-1-2008	Amend	2-1-2008	845-005-0425	6-29-2008	Adopt	7-1-2008
839-025-0025	1-1-2008	Amend	2-1-2008	845-005-0426	1-1-2008	Adopt(T)	1-1-2008
839-025-0035	1-1-2008	Amend	2-1-2008	845-005-0426	6-29-2008	Adopt	7-1-2008
839-025-0037	1-1-2008	Amend	2-1-2008	845-005-0430	2-18-2008	Adopt(T)	3-1-2008
839-025-0080	1-1-2008	Amend	2-1-2008	845-005-0430(T)	3-17-2008	Suspend	5-1-2008
839-025-0085	1-1-2008	Amend	2-1-2008	845-005-0440	1-1-2008	Amend	2-1-2008
839-025-0090	1-1-2008	Amend	2-1-2008	845-006-0335	7-1-2008	Amend	7-1-2008
839-025-0095	1-1-2008	Amend	2-1-2008	845-006-0340	1-1-2008	Amend	2-1-2008
839-025-0100	1-1-2008	Amend	2-1-2008	845-006-0340	6-1-2008	Amend	6-1-2008
839-025-0150	1-1-2008	Amend	2-1-2008	845-006-0391	1-1-2008	Adopt(T)	1-1-2008
839-025-0200	1-1-2008	Amend	2-1-2008	845-006-0391	4-18-2008	Amend(T)	6-1-2008
839-025-0210	1-1-2008	Amend	2-1-2008	845-006-0391	6-29-2008	Adopt	7-1-2008
839-025-0220	1-1-2008	Amend	2-1-2008	845-006-0391(T)	4-18-2008	Suspend	6-1-2008
839-025-0230	1-1-2008	Amend	2-1-2008	845-006-0392	1-1-2008	Adopt(T)	1-1-2008
839-025-0310	1-1-2008	Amend	2-1-2008	845-006-0392	4-18-2008	Amend(T)	6-1-2008
839-025-0315	1-1-2008	Adopt	2-1-2008	845-006-0392	6-29-2008	Adopt	7-1-2008
839-025-0340	1-1-2008	Amend	2-1-2008	845-006-0392(T)	4-18-2008	Suspend	6-1-2008
839-025-0500	1-1-2008	Amend	2-1-2008	845-006-0395	1-1-2008	Suspend	1-1-2008
839-025-0520	1-1-2008	Amend	2-1-2008	845-006-0395	6-29-2008	Repeal	7-1-2008
839-025-0530	1-1-2008	Amend	2-1-2008	845-006-0396	1-1-2008	Amend(T)	1-1-2008
839-025-0540	1-1-2008	Amend	2-1-2008	845-006-0396	4-18-2008	Amend(T)	6-1-2008
839-025-0700	11-23-2007	Amend	1-1-2008	845-006-0396	6-29-2008	Amend	7-1-2008
839-025-0700	1-1-2008	Amend	2-1-2008	845-006-0396(T)	4-18-2008	Suspend	6-1-2008
839-025-0700	1-4-2008	Amend	2-1-2008	845-006-0398	1-1-2008	Suspend	1-1-2008
839-025-0700	1-11-2008	Amend	2-1-2008	845-006-0398	6-29-2008	Repeal	7-1-2008
839-025-0700	2-21-2008	Amend	4-1-2008	845-006-0400	1-1-2008	Adopt(T)	1-1-2008
839-025-0700	3-13-2008	Amend	4-1-2008	845-006-0400	6-29-2008	Adopt	7-1-2008
839-025-0700	4-1-2008	Amend	5-1-2008	845-006-0401	1-1-2008	Adopt(T)	1-1-2008
839-025-0700	4-14-2008	Amend	5-1-2008	845-006-0401	6-29-2008	Adopt	7-1-2008
839-025-0700	4-24-2008	Amend	6-1-2008	845-006-0451	2-18-2008	Adopt(T)	3-1-2008
839-025-0700	4-30-2008	Amend	6-1-2008	845-006-0451(T)	3-17-2008	Suspend	5-1-2008
839-025-0700	6-11-2008	Amend	7-1-2008	845-007-0015	1-1-2008	Amend	2-1-2008
839-025-0700	6-18-2008	Amend	8-1-2008	845-008-0045	7-1-2008	Amend	7-1-2008
839-025-0700	6-26-2008	Amend	8-1-2008	845-015-0118	7-1-2008	Amend	7-1-2008
839-025-0700	7-1-2008	Amend	8-1-2008	845-015-0141	1-1-2008	Adopt(T)	1-1-2008
839-025-0700	7-10-2008	Amend	8-1-2008	845-015-0141	6-29-2008	Adopt	7-1-2008
839-025-0750	4-23-2008	Amend	6-1-2008	845-015-0148	7-1-2008	Amend	7-1-2008
839-025-0750	6-5-2008	Amend	7-1-2008	845-015-0165	1-1-2008	Amend	2-1-2008
839-050-0020	7-11-2008	Amend	8-1-2008	845-015-0190	7-1-2008	Amend	7-1-2008
845-001-0007	4-1-2008	Amend	5-1-2008	845-020-0035	3-16-2008	Amend	3-1-2008
845-003-0670	2-1-2008	Amend	3-1-2008	847-001-0030	5-16-2008	Adopt(T)	7-1-2008
845-004-0001	7-1-2008	Amend	7-1-2008	847-005-0005	1-22-2008	Amend	3-1-2008
845-005-0311	7-1-2008	Amend	7-1-2008	847-008-0015	4-24-2008	Amend	6-1-2008
845-005-0416	1-1-2008	Adopt(T)	1-1-2008	847-008-0018	4-24-2008	Adopt	6-1-2008
845-005-0416	4-18-2008	Amend(T)	6-1-2008	847-008-0022	4-24-2008	Amend	6-1-2008
845-005-0416	6-29-2008	Adopt	7-1-2008	847-008-0023	4-24-2008	Amend	6-1-2008
845-005-0416(T)	4-18-2008	Suspend	6-1-2008	847-008-0037	1-22-2008	Amend	3-1-2008
845-005-0417	1-1-2008	Adopt(T)	1-1-2008	847-008-0037	4-24-2008	Amend	6-1-2008
845-005-0417	4-18-2008	Amend(T)	6-1-2008	847-008-0055	1-22-2008	Amend	3-1-2008
845-005-0417	6-29-2008	Adopt	7-1-2008	847-010-0060	1-22-2008	Amend	3-1-2008
845-005-0417(T)	4-18-2008	Suspend	6-1-2008	847-010-0064	1-22-2008	Amend	3-1-2008
845-005-0420	1-1-2008	Amend(T)	1-1-2008	847-010-0070	1-22-2008	Amend	3-1-2008
845-005-0420	6-29-2008	Amend	7-1-2008	847-010-0073	1-22-2008	Amend	3-1-2008

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847-017-0010	4-24-2008	Amend	6-1-2008	851-056-0018	6-24-2008	Amend	8-1-2008
847-020-0155	1-22-2008	Amend	3-1-2008	851-056-0026	6-24-2008	Amend	8-1-2008
847-020-0183	1-22-2008	Amend	3-1-2008	851-061-0020	2-25-2008	Amend	4-1-2008
847-023-0005	1-22-2008	Amend	3-1-2008	851-061-0030	2-25-2008	Amend	4-1-2008
847-025-0000	7-15-2008	Amend(T)	8-1-2008	851-061-0050	6-24-2008	Amend	8-1-2008
847-035-0030	4-24-2008	Amend	6-1-2008	851-061-0070	6-24-2008	Amend	8-1-2008
847-050-0020	1-22-2008	Amend	3-1-2008	851-061-0080	2-25-2008	Amend	4-1-2008
847-070-0016	4-24-2008	Amend(T)	6-1-2008	851-061-0090	2-25-2008	Amend	4-1-2008
847-080-0010	4-24-2008	Amend	6-1-2008	851-061-0100	6-24-2008	Amend	8-1-2008
847-080-0018	4-24-2008	Amend	6-1-2008	851-061-0120	2-25-2008	Amend	4-1-2008
848-035-0020	2-19-2008	Amend(T)	4-1-2008	852-001-0001	12-7-2007	Amend	1-1-2008
850-010-0005	6-11-2008	Amend	7-1-2008	852-001-0002	12-7-2007	Amend	1-1-2008
850-030-0020	6-10-2008	Amend	6-1-2008	852-001-0002	7-1-2008	Amend	8-1-2008
850-030-0035	6-10-2008	Amend	6-1-2008	852-050-0006	12-7-2007	Amend	1-1-2008
850-030-0090	6-10-2008	Amend	6-1-2008	852-080-0030	1-1-2008	Amend	1-1-2008
850-030-0195	6-10-2008	Amend	6-1-2008	852-080-0030	7-1-2008	Amend	8-1-2008
850-050-0120	6-11-2008	Amend	7-1-2008	855-001-0005	7-1-2008	Amend	8-1-2008
850-060-0225	2-19-2008	Amend	4-1-2008	855-006-0005	2-20-2008	Amend	4-1-2008
850-060-0225	3-21-2008	Amend	5-1-2008	855-006-0015	2-5-2008	Adopt	3-1-2008
850-060-0225	6-11-2008	Amend	7-1-2008	855-010-0045	2-20-2008	Adopt	4-1-2008
850-060-0226	2-19-2008	Amend	4-1-2008	855-019-0005	2-20-2008	Am. & Ren.	4-1-2008
850-060-0226	3-21-2008	Amend	5-1-2008	855-019-0007	2-20-2008	Repeal	4-1-2008
850-060-0226	6-11-2008	Amend	7-1-2008	855-019-0010	2-20-2008	Am. & Ren.	4-1-2008
851-021-0005	6-24-2008	Amend	8-1-2008	855-019-0015	2-20-2008	Am. & Ren.	4-1-2008
851-021-0010	6-24-2008	Amend	8-1-2008	855-019-0020	2-20-2008	Repeal	4-1-2008
851-021-0015	6-24-2008	Amend	8-1-2008	855-019-0025	2-20-2008	Am. & Ren.	4-1-2008
851-021-0020	6-24-2008	Amend	8-1-2008	855-019-0030	2-20-2008	Am. & Ren.	4-1-2008
851-021-0025	6-24-2008	Amend	8-1-2008	855-019-0035	2-20-2008	Repeal	4-1-2008
851-021-0040	6-24-2008	Amend	8-1-2008	855-019-0040	2-20-2008	Am. & Ren.	4-1-2008
851-021-0045	6-24-2008	Amend	8-1-2008	855-019-0050	2-20-2008	Am. & Ren.	4-1-2008
851-021-0050	6-24-2008	Amend	8-1-2008	855-019-0055	2-20-2008	Am. & Ren.	4-1-2008
851-021-0055	6-24-2008	Amend	8-1-2008	855-019-0100	2-20-2008	Adopt	4-1-2008
851-021-0060	6-24-2008	Amend	8-1-2008	855-019-0110	2-20-2008	Adopt	4-1-2008
851-021-0065	6-24-2008	Amend	8-1-2008	855-019-0150	2-20-2008	Adopt	4-1-2008
851-021-0070	6-24-2008	Amend	8-1-2008	855-019-0220	2-20-2008	Adopt	4-1-2008
851-021-0090	6-24-2008	Amend	8-1-2008	855-019-0240	2-20-2008	Adopt	4-1-2008
851-021-0120	6-24-2008	Amend	8-1-2008	855-019-0250	2-20-2008	Adopt	4-1-2008
851-045-0000	6-24-2008	Repeal	8-1-2008	855-019-0300	2-20-2008	Adopt	4-1-2008
851-045-0005	6-24-2008	Repeal	8-1-2008	855-035-0005	2-20-2008	Amend	4-1-2008
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851-045-0015	11-21-2007	Amend	1-1-2008	855-041-0020	2-20-2008	Amend	4-1-2008
851-045-0015	6-24-2008	Repeal	8-1-2008	855-041-0050	2-20-2008	Am. & Ren.	4-1-2008
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851-045-0020	6-24-2008	Repeal	8-1-2008	855-041-0061	2-5-2008	Adopt	3-1-2008
851-045-0025	6-24-2008	Repeal	8-1-2008	855-041-0063	2-20-2008	Am. & Ren.	4-1-2008
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851-045-0050	6-24-2008	Adopt	8-1-2008	855-041-0100	2-20-2008	Am. & Ren.	4-1-2008
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851-045-0070	6-24-2008	Adopt	8-1-2008	855-041-0300	2-20-2008	Amend	4-1-2008
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851-056-0012	2-25-2008	Amend	4-1-2008	855-045-0220	2-20-2008	Adopt	4-1-2008
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855-045-0260	2-20-2008	Adopt	4-1-2008	863-005-0020	7-1-2008	Adopt	7-1-2008
855-045-0270	2-20-2008	Adopt	4-1-2008	863-005-0030	7-1-2008	Adopt	7-1-2008
855-055-0005	2-20-2008	Repeal	4-1-2008	863-005-0040	7-1-2008	Adopt	7-1-2008
855-055-0010	2-20-2008	Repeal	4-1-2008	863-005-0050	7-1-2008	Adopt	7-1-2008
855-055-0015	2-20-2008	Repeal	4-1-2008	863-005-0060	7-1-2008	Adopt	7-1-2008
855-055-0020	2-20-2008	Repeal	4-1-2008	863-005-0070	7-1-2008	Adopt	7-1-2008
856-001-0000	1-24-2008	Amend	3-1-2008	863-005-0080	7-1-2008	Adopt	7-1-2008
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856-010-0012	1-24-2008	Amend	3-1-2008	863-015-0125(T)	7-1-2008	Repeal	7-1-2008
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858-010-0005	3-26-2008	Amend	5-1-2008	875-015-0030	2-11-2008	Amend	3-1-2008
858-010-0007	3-26-2008	Amend	5-1-2008	875-020-0005	4-21-2008	Amend(T)	5-1-2008
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858-010-0020	3-26-2008	Amend	5-1-2008	875-030-0050	2-11-2008	Amend	3-1-2008
858-010-0025	3-26-2008	Amend	5-1-2008	875-030-0050	5-12-2008	Amend	6-1-2008
858-010-0030	3-26-2008	Amend	5-1-2008	877-020-0000	7-1-2008	Amend	8-1-2008
858-010-0036	3-26-2008	Amend	5-1-2008	877-020-0005	7-1-2008	Amend	8-1-2008
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858-010-0050	3-26-2008	Amend	5-1-2008	877-020-0009	7-1-2008	Amend	8-1-2008
858-010-0055	3-26-2008	Amend	5-1-2008	877-020-0010	7-1-2008	Amend	8-1-2008
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858-040-0015	3-26-2008	Amend	5-1-2008	877-020-0030	7-1-2008	Amend	8-1-2008
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858-040-0035	3-26-2008	Amend	5-1-2008	877-020-0036	7-1-2008	Amend	8-1-2008
858-040-0036	3-26-2008	Amend	5-1-2008	877-020-0046	7-1-2008	Amend	8-1-2008
858-040-0055	3-26-2008	Amend	5-1-2008	877-020-0055	7-1-2008	Amend	8-1-2008
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858-050-0140	3-26-2008	Amend	5-1-2008	918-001-0010	3-18-2008	Amend	5-1-2008
858-050-0145	3-26-2008	Amend	5-1-2008	918-001-0230	7-1-2008	Repeal	8-1-2008
858-050-0150	3-26-2008	Amend	5-1-2008	918-001-0240	7-1-2008	Amend	8-1-2008
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918-030-0220	1-1-2008	Amend	2-1-2008	918-305-0280	4-1-2008	Amend	4-1-2008
918-030-0230	1-1-2008	Amend	2-1-2008	918-305-0290	4-1-2008	Amend	4-1-2008
918-098-1012	1-1-2008	Amend	2-1-2008	918-305-0300	4-1-2008	Amend	4-1-2008
918-098-1015	1-1-2008	Amend	2-1-2008	918-305-0310	4-1-2008	Amend	4-1-2008
918-225-0240	1-1-2008	Amend	2-1-2008	918-305-0320	4-1-2008	Amend	4-1-2008
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918-282-0130	1-1-2008	Amend	2-1-2008	918-400-0340	1-1-2008	Amend	2-1-2008
918-282-0210	1-1-2008	Repeal	2-1-2008	918-400-0380	1-1-2008	Amend	2-1-2008
918-282-0220	1-1-2008	Amend	2-1-2008	918-400-0800	1-1-2008	Amend	2-1-2008
918-282-0240	1-1-2008	Amend	2-1-2008	918-460-0015	6-25-2008	Amend(T)	8-1-2008
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