OREGON BULLETIN

Supplements the 2008 *Oregon Administrative Rules Compilation*

Volume 47, No. 7
July 1, 2008

For May 16, 2008–June 13, 2008

Published by
BILL BRADBURY
Secretary of State

INFORMATION AND PUBLICATION SCHEDULE

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the *Oregon Administrative Rules Compilation* and the *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 ORDER NO. 08-12

DESIGNATING THE MARK O. HATFIELD CHAIR OF THE OREGON HEALTH & SCIENCE UNIVERSITY BOARD OF DIRECTORS

From February 25, 2000 to May 23, 2008, Senator Mark O. Hatfield faithfully served as a member of the Oregon Health & Science University (OHSU) Board of Directors. In honor of Senator Hatfield's major contributions to advance health care and improve medical research facilities in Oregon, this Executive Order permanently designates the Chair of OHSU's Board of Directors as The Mark O. Hatfield Chair.

The hallmark of Senator Hatfield's political career as an Oregon legislator, Secretary of State, Governor and United States Senator has been his unwavering commitment to the public good. Time after time, he has reached across geographical, political and philosophical divides to work as a stalwart advocate for improving all Oregonians' quality of life.

Throughout his years of service, Senator Hatfield has devoted much of his energy to improving Oregon's health care system. While working as a member and Chair of the United States Senate Appropriations Committee, Senator Hatfield led Congress to appropriate more than $300 million dollars to Oregon for health care research and infrastructure development. Senator Hatfield's efforts spurred the construction of cutting edge medical facilities at OHSU, including the Doernbecher Children's Hospital, the Vollum Institute for Advanced Biomedical Research, the School of Nursing, the Ambulatory Research Center, the Oregon Hearing Research Center and the Casey Eye Institute. As a result of these investments, OHSU is recognized nationally as a preeminent medical research facility. Senator Hatfield's commitment to improving health care ensures that our future generations will inherit a healthier and more prosperous Oregon.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. In honor of Senator Mark O. Hatfield's great commitment to advancing health care and improving medical research facilities in Oregon, I designate the Chair of the OHSU Board of Directors as The Mark O. Hatfield Chair.

2. The Mark O. Hatfield Chair shall be occupied by an Oregonian who strives to emulate Senator Hatfield's selfless public service, humility, vision, strength of character and integrity.

3. The Mark O. Hatfield Chair shall serve as a testament to Senator Hatfield's unwavering devotion to his native Oregon and Oregonians' abiding, heartfelt gratitude to Senator Hatfield.

Done at Salem, Oregon, this 23th day of May, 2008.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

CHANCE TO COMMENT ON… PROPOSED CONDITIONAL NO FURTHER ACTION DECISION FOR BUILDING D, 217 DISTRIBUTION CENTER SITE, BEAVERTON, OREGON

COMMENTS DUE: July 31, 2008
PROJECT LOCATION: 11000 SW 11th Street, Beaverton, Oregon
PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rule, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a conditional "No Further Action" (NFA) determination proposed for Building D, 217 Distribution Center site in Beaverton, Oregon. This proposed conditional NFA determination is based on approval of the investigation and remedial measures conducted to date.
HIGHLIGHTS: The project site is of Building D, which is one of five warehouse buildings that comprises of the 217 Distribution Center located in the proximity of State Highway 217 and Allen Boulevard. A former dry cleaning business (TLC Cleaners) occupied the southern portion of Building D from 1983 to 1985. Halogenated volatile organic compounds (HVOCs) were detected in soil and groundwater samples in the former dry cleaner and drum area immediately east of Building D. HVOC contamination is limited to the Building D and property. Fate and transport modeling results indicate HVOCs in shallow groundwater will not migrate beyond the west edge of the Highway 217 right-of-way.

In December 1996 and January 1997, a source soil removal action was performed and a passive sub slab venting system was installed within the excavation beneath Building D to control vapors from entering the building. In 2007, the facility owner installed additional vapor recovery systems to improve system performance and conducted air monitoring within and outside of the building. Monitoring results indicate HVOC concentrations are being controlled at levels below DEQ risk-based concentrations both inside the building and on-site outside of the building. DEQ concludes based on the monitoring that the vapor controls are achieving protection of site workers. DEQ will require an Easement and Equitable Servitude requiring maintenance of the vapor controls until subsurface contamination has dissipated to levels that no longer require ventilation controls to ensure worker protection.
HOW TO COMMENT: You may review the administrative record for the proposed NFA at DEQ's Northwest Region Gresham Office located at 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030. For an appointment to review these files call 503-667-8414 x55012; toll free at (800) 452-4011; or TTY at 503-229-5471. Please send written comments to Janelle Waggy, Project Manager, at the address listed above or via email at WAGGY.Janelle@deq.state.or.us. DEQ must receive written comments by 5 p.m. on July 31, 2008. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

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's Office of 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 July, 2008 deadline. In the absence of comments, DEQ will issue the conditional No Further Action determination.

A CHANCE TO COMMENT ON A PROPOSED REMOVAL ACTION FOR THE NORTH UNIT OF THE FORMER J.O. OLSEN MANUFACTURING COMPANY, LOCATED AT 41 NORTH DANEBO AVENUE, EUGENE, OREGON

Oregon Department of Environmental Quality (DEQ) invites public comment on a proposed removal action for a cleanup of pentachlorphenol (PCP) and related contamination in soil at the North Unit of the former J. O. Olsen Manufacturing Company, located at 41 North Danebo Avenue, Eugene, Oregon.

DEQ has completed a review of interim action alternatives of the North Unit of the former J.O. Olsen Manufacturing Company site. The site was a former milling and woodworking plant which operated from 1923 to 1992. Prior to 1923, the site was used for agricultural purposes. Horizon Painting Company and Specialty Crates now occupy the buildings on the Olsen property.

The contaminants of concern in the North Unit are PCP and dioxin in soil. As part of the former milling operations, Olsen Manufacturing used a dip tank containing a PCP solution for surface treatment of finished wood products. The PCP solution consisted of approximately one part PCP and three parts mineral spirits. Operations at the facility resulted in the spillage of the treatment solutions and subsequent contamination of surface and subsurface soils and groundwater. Dioxin is thought to be a manufacturing impurity in the PCP that was used on site.

Four applicable technologies were considered as an interim action for the North Unit. The alternatives were: no action, capping contamination in place, excavation of soils and removal to a hazardous waste landfill, and excavation of soils and removal to a solid waste landfill. These alternatives were evaluated with regard to the applicability of the technology to the subsurface conditions, the contaminant's characteristics, and the demonstrated effectiveness at other similar sites.

DEQ is recommending the alternative of excavation of soils and removal to a solid waste landfill. This action includes the excavation of all soils within the remedial action area to a depth of 3 feet and removes all soils above the agreed upon cleanup level within the upper 3 feet. Upon removal of the contaminated soil, the excavation will be graded. This action does not address deeper soils. Engineering and institutional controls will be developed to augment this interim action. The Locality of the Facility for the North Unit can be found on Figure 2 of the DEQ Removal Assessment for this site.

Project documents for this site are available for public review at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene 97401. Contact the file specialist at (541) 686-7838 or 1-800-844-8467 (toll-free in Oregon) for an appointment. Please send written comments to Norman Read at the listed above address or via email at read.norm@deq.state.or.us. DEQ must receive written comments by 5 p.m., July 31, 2008.

CHANCE TO COMMENT ON… PROPOSED NO FURTHER ACTION DETERMINATION AND REMOVAL OF THE SITE FROM THE CRL AND INVENTORY, ELEGANCE CLEANERS SITE

COMMENTS DUE: August 1, 2008
PROJECT LOCATION: The site is located at 20547 SW Tualatin Valley Highway, Aloha, Oregon.
PROPOSAL: Pursuant to Oregon Revised Statute, ORS 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 issue a "No Further Action" (NFA) determination for the site, and remove the site from the Confirmed Release and Inventory Lists.
HIGHLIGHTS: Elegance Cleaners is an active retail dry cleaner situated in a 49,955-square-foot, multi-tenant retail space constructed between 1987 and 1989. A Safeway store is located adjacent to Elegance Cleaners and occupies the majority of the building. The Safeway store replaced a previous Thriftway store in 2001. The entire retail structure is located on a 1.6-acre lot owned by Hemstreet Development Corporation (HDC).

Initial environmental investigations were conducted from 1998–2000 by HDC and indicated tetrachloroethene (PCE), a common dry cleaning solvent used at Elegance Cleaners, had been releases to the environment from a leaky sewer line and impacted groundwater beneath the Thriftway space. A vapor collection system was installed beneath the current Safeway space during site redevelopment in June 2001 as a precautionary measure to control PCE vapors from entering the store. An in-line ventilation fan was installed on the existing

vapor collection system to improve the control of PCE vapors. Air monitoring within the building after fan installation and operation indicate the vapor collection system had reduced indoor air concentrations of PCE to levels below the applicable risk-based concentration, and in 2003 DEQ determined that additional site investigation activities under the Oregon Dry Cleaner Program were not warranted. DEQ recommended that the need for continued, active sub-slab vapor controls be evaluated after five years.

In April 2008, DEQ collected a vapor sample from the exhaust vent of the vapor collection system. Based on these results DEQ concludes that groundwater contamination beneath the building associated with the historic release of PCE from the Elegance Cleaners operations has dissipated over the last 5 years to levels that no longer pose an unacceptable risk to human health and the environment in the absence of active venting controls. Because of the reduced levels active ventilation controls are no longer deemed necessary to protect human health or the environment the site is proposed to be removed from the Confirmed Release list (CRL) and Inventory of hazardous substance sites.

HOW TO COMMENT: You can review the administrative record for the proposed No Further Action at DEQ's Northwest Region located at 2020 SW Fourth Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call DEQ File Clerk, Dawn Weinberger at (503)229-6729 or toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201 or via email at: pugh.mark@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on August 1, 2008.

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.

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 August 1, 2008 deadline. A final decision will be made after consideration of public comment.

NOTICE FOR COMMENT ON PROPOSED CLEANUP PORT OF PORTLAND — FORMER WRECKING YARD SITE

COMMENTS DUE: July 31, 2008

PROJECT LOCATION: Portland International Center, between Alderwood Rd, the Columbia Slough, I205, and NE 82nd Ave, Portland, OR (ECSI Site 3037)

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed no further action determination for environmental contamination associated with former wrecking yards at this location.

HIGHLIGHTS: Prior to the Port of Portland's purchase of the property in the early 1970s, the site was occupied by several automobile wrecking yards. Environmental investigations conducted between 1996 and 2002 revealed the presence of contamination likely resulting from these activities. Petroleum hydrocarbons, metals, polynuclear aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) were detected in site soils. PAHs were detected in shallow groundwater.

In 1995, about 175 tons of petroleum-contaminated soil and automobile related debris were excavated from the eastern portion of the site and transported to Hillsboro Landfill for disposal. In 2001, about 40 cubic yards of lead-contaminated soil were excavated from two areas in the western portion of the site and transported to Hillsboro Landfill for disposal.

Characterization of remaining contaminated soil at the site was completed in 2002. DEQ selected the following measures to address remaining contamination:

- Capping contaminated soil in the western portion of the site with an asphalt and concrete surface/parking lot
- Capping contaminated soil in the eastern portion of the site with clean imported fill
- Restrictions notifying property owners/operators of the presence of the cap and associated protocols for proper handling and disposal should the capped material be excavated for any reason
- Monitoring to ensure cap is properly maintained.

These measures have been implemented and a long-term management plan has been developed.

HOW TO COMMENT: The No Further Action recommendation memo and complete Administrative Record for the project is available for public review at the DEQ Northwest Region Office in Portland. To schedule an appointment to review files at the DEQ Northwest Region office, call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148. Written comments should be sent to the Project Manager at the DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or sutter.jennifer@deq.state.or.us by July 31, 2008.

THE NEXT STEP: DEQ will consider all public comments and the Regional Cleanup Manager will make and publish the final decision after consideration of these comments.

PROPOSED NO FURTHER ACTION AND CERTIFICATE OF COMPLETION AT THE MAR COM NORTH SITE

COMMENTS DUE: July 31, 2008

PROJECT LOCATION: 8970 North Bradford Street, Portland, Oregon

PROPOSAL: As required by ORS 465.320 and ORS 465.325(10)(b), the Department of Environmental Quality (DEQ) invites public comment on remedial action completed at the Former Mar Com North Site and DEQ's proposal to issue a Certificate of Completion for the site.

HIGHLIGHTS: The 6.46-acre site is located in the St. Johns area of north Portland adjacent to the Willamette River and has primarily been used for materials and equipment storage since the early 1900s. There are no structures on the site and adjacent property uses consist of vehicle storage and a former ship repair facility. DEQ and the former property owners conducted a soil and groundwater investigation of the site. Low levels of petroleum hydrocarbons and metals were detected in isolated areas of the property during the investigation. After conducting a human health and ecological risk assessment, DEQ issued a Record of Decision (ROD) in May 2004. The ROD stated that a small area of soil containing barium and chromium and areas of sandblast grit containing arsenic and lead above risk based concentrations grit needed to be removed. In 2006, the Port of Portland obtained ownership of the property and removed the contaminated soil and sandblast grit in May 2007. A total of 278 cubic yards of soil and sandblast grit were removed from the site and transported to Hillsboro Landfill for disposal. Post-excavation confirmation sampling has shown no detections of contaminants above DEQ's risk based screening levels and normal background concentrations. Current site zoning is industrial, and the site is expected to be redeveloped for industrial use. Based on this information, DEQ proposes to issue a Certificate of Completion for the Former Mar Com North Site site.

HOW TO COMMENT: To review project records, contact Dawn Weinberger at (503) 229-6729. The DEQ project manager is Mike Romero (503-229-5563). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by July 31, 2008. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more.

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

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Appraiser Certification and Licensure Board
Chapter 161

Rule Caption: Proposed adoption, amendment and repeal of rules resulting from three year rule review.

Date:	Time:	Location:
7-23-08	9 a.m.	3000 Market St. NE, Suite 541 Salem, OR

Hearing Officer: Craig Zell
Stat. Auth.: ORS 183.355(1)(a), 674.305(7) & 674.310(2)
Other Auth.: Title XI of the Federal Financial Reform, Recovery & Enforcement Act of 1989 (12 USC 3310 et seq.)
Stats. Implemented: ORS 674.305(7) & 674.310(2)
Proposed Adoptions: 161-015-0025
Proposed Amendments: 161-001-0005, 161-002-0000, 161-006-0140, 161-006-0175, 161-008-0040, 161-010-0010, 161-010-0020, 161-010-0025, 161-010-0035, 161-010-0045, 161-010-0055, 161-010-0080, 161-015-0030, 161-020-0015, 161-020-0035, 161-020-0130, 161-020-0150, 161-025-0005, 161-025-0010, 161-025-0060
Proposed Repeals: 161-050-0050
Last Date for Comment: 7-23-08, Close of hearing
Summary: The Board proposes adoption to Oregon Administrative Rules chapter 161, division 015, rule 0025 regarding applications form out-of-state credential holder, amendments to division 1, regarding model rules of procedure; division 2, regarding definitions; division 6, regarding registry and enforcement guidelines; division 8, regarding fees and miscellaneous charges; division 10, regarding licensure and certification requirements; division 15, regarding application and examination process; division 20 regarding education requirements; division 25, regarding scope of practice, Appraisal Standards and USPAP; and repeal of OAR chapter 161, division 050, rule 0050.
Rules Coordinator: Karen Turnbow
Address: Appraiser Certification and Licensure Board, 3000 Market St. NE, Suite 541, Salem, OR 97301
Telephone: (503) 485-2555

Board of Chiropractic Examiners
Chapter 811

Rule Caption: Add unprofessional conduct language to Certified Chiropractic Assistants rule.

Date:	Time:	Location:
7-24-08	9:30 a.m.	OBCE Administrative Office Large Upstairs Conf. Rm. 3218 Pringle Rd.. SE Salem, OR

Hearing Officer: Dave McTeague, Executive Director
Stat. Auth.: ORS 684
Stats. Implemented: ORS 684
Proposed Amendments: 811-010-0110
Last Date for Comment: 7-24-08
Summary: The current unprofessional conduct language in ORS 684 may be constructed to pertain only to chiropractic physicians. This amendment writes similar language on unprofessional conduct into the CCA administrative rule.
Rules Coordinator: Dave McTeague
Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302-6311
Telephone: (503) 378-5816

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Rule amendments that implement statutory changes to Oregon's housing determination law.
Stat. Auth.: HB 3639
Other Auth.: ORS 659A
Stats. Implemented: ORS 659A.001, 659A.145, 659A.421, 659A.820, 659A.825, 659A.830, 659A.840, 659A.845, 659A.850, 659A.870, 659A.875, 659A.880 & 659A.885
Proposed Amendments: 839-003-0005, 839-003-0010, 839-003-0020, 839-003-0025, 839-003-0040, 839-003-0045, 839-003-0050, 839-003-0055, 839-003-0060, 839-003-0065, 839-003-0070, 839-003-0080, 839-003-0085, 839-003-0090, 839-003-0095, 839-003-0100, 839-003-0200, 839-003-0205, 839-003-0210, 839-003-0215, 839-003-0220, 839-003-0225, 839-003-0230, 839-003-0235, 839-003-0240, 839-003-0245, 839-005-0000, 839-005-0003, 839-005-0010, 839-005-0016, 839-005-0026, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0220
Last Date for Comment: 8-31-08
Summary: Amend the administrative rules listed above in order to implement House Bill 3639, enacted by the 2008 Special Session of the Oregon Legislature, and conform rules to federal housing discrimination law.
Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232
Telephone: (971) 673-0784

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Department of Administrative Services, Public Employees' Benefit Board
Chapter 101

Rule Caption: Experience in using the rule identified the need for clarification of language.

Date:	Time:	Location:
7-16-08	1–2 p.m.	1225 Ferry St. SE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 243.061 - 243.302
Other Auth.: ORS 279
Stats. Implemented: ORS 243, 659 & 743
Proposed Amendments: 101-010-0005, 101-015-0005, 101-015-0015, 101-015-0025, 101-020-0002, 101-020-0020, 101-020-0025, 101-020-0037, 101-020-0040, 101-020-0045, 101-030-0015, 101-030-0022
Last Date for Comment: 7-25-08

Summary: This rulemaking clarifies language in OAR Chapter 101 that govern the eligibility for benefits and procedures of the Public Employees' Benefit Board. Experience in using the rule and the PEBB online system have identified the need for clarification of rules.
Rules Coordinator: Sharon M. Sheehan
Address: Department of Administrative Services, Public Employees' Benefit Board, 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-8031

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

Rule Caption: Allows licensed elevator contractors to use minor label permits when performing minor repairs on elevators.

Date:	Time:	Location:
7-22-08	10 a.m.	1535 Edgewater St NW Salem, OR 97304

Hearing Officer: Celina Patterson
Stat. Auth.: ORS 447.072, 447.076, 447.095, 455.020, 455.144(7), 455.154, 455.155, 455.627, 455.846, 460.085(1), 479.540(15), 479.570(2), & 479.840
Stats. Implemented: ORS 447.072, 447.076, 455.154, 455.155, 455.627, 455.844, 455.846, 460.085(1), 479.540(15), & 479.570(2)
Proposed Adoptions: 918-400-0670, 918-400-0675, 918-400-0680, 918-400-0685
Proposed Amendments: Rules in 918-100, 918-400
Last Date for Comment: 7-25-08, 5 p.m.
Summary: The proposed rules expand the division's statewide minor label program to include minor repairs to elevators. The work must be performed by licensed elevator contractors and is limited to specific repairs deemed to be "minor." These rules do not add permit or code requirements for performing minor repairs and all minor repair work performed must be in compliance with the Oregon Elevator Specialty code.
Rules Coordinator: Shauna Parker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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

Rule Caption: Increase examination or audit charges in seven programs administered in the Division.

Date:	Time:	Location:
8-13-08	9 a.m.	Conf. Rm. 260, L&I Bldg. 350 Winter St NE Salem, OR

Hearing Officer: Patricia A. Locnikar
Stat. Auth.: ORS 59.880, 97.333, 97.935, 646A.266, 697.058, 697.632, 717.310 & 726.250
Stats. Implemented: ORS 59.880, 97.933, 97.935, 646A.266, 697.085, 976.732, 717.255 & 726.250
Proposed Amendments: 441-740-0010, 441-745-0340, 441-810-0110, 441-830-0020, 441-860-0110, 845-910-0055, 441-930-0270
Last Date for Comment: 8-19-08, 5 p.m.
Summary: These proposed rule amendments would increase the examination or fees assessed by the Director in the following programs administered in the Division of Finance and Corporate Securities: mortgage lending, prearranged funeral plans, credit service organizations, collection agencies, debt consolidating agencies, money transmitters, and pawnbrokers.
Rules Coordinator: Shelley Greiner
Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301
Telephone: (503) 947-7484

Rule Caption: Rule renumbering due to shift in program responsibility within the Department.
Stat. Auth.: ORS 446.666
Stats. Implemented:
Proposed Ren. & Amends: 918-030-0400 to 441-446-0100, 918-030-0410 to 441-446-0110, 918-030-0420 to 441-446-0200, 918-030-0430 to 441-446-0210, 918-030-0490 to 441-446-0300
Last Date for Comment: 7-22-08, 5 p.m.
Summary: The legislature directed the Department of Consumer and Business Services to regulate manufactured structure dealers through licensing. The administration of the manufactured structures dealer licensing program was transferred from the Building Codes Division to the Division of Finance and Corporate Securities (DFCS). The rules administering manufactured structures dealer licensing program are being moved to OAR chapter 441, where the rules concerning other programs administered by the DFCS are located. This rulemaking activity only includes changing administrative rule numbers and cross-references.
Rules Coordinator: Shelley Greiner
Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301
Telephone: (503) 947-7484

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Health Insurance, Estimates of Enrollee Share of Costs for Covered Procedures and Services.

Date:	Time:	Location:
8-5-08	2 p.m.	350 Winter St. NE Conference Rm. F (Basement) Salem, OR

Hearing Officer: Jeanette Holman
Stat. Auth.: ORS 731.244 & 743.893
Stats. Implemented: ORS 743.874, 743.876 & 743.878
Proposed Adoptions: 836-053-1401 – 836-053-1415
Last Date for Comment: 8-12-08
Summary: This rulemaking implements legislation enacted in 2007 (Chapter 390, Oregon Laws 2007 (Enrolled House Bill 2213)), which requires health insurers to establish a procedure for providing to an enrollee an estimate of the portion of covered costs of a service or procedure for which the enrollee will be responsible.
Rules Coordinator: Sue Munson
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301
Telephone: (503) 947-7272

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Department of Corrections
Chapter 291

Rule Caption: Inmate Visitation 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: 291-127-0200 – 291-127-0330
Last Date for Comment: 8-15-08
Summary: These rule modifications are necessary to revise and update the Department's policies that govern the inmate visitation programs in its correctional institutions, and ensure compliance with the Oregon Fairness Act (HB 2007). Major modifications include expanding the definition of immediate family, restructuring visiting for inmates assigned to special housing units, clarify the administrative review process for individuals whose application has been denied, and reflect organizational and operational changes that have occurred 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 Fish and Wildlife
Chapter 635

Rule Caption: Amendments regarding harvest of game birds, season dates, open areas, bag limits and take of wild birds including nests and eggs.

Date:	Time:	Location:
8-8-08	8 a.m.	3406 Cherry Ave N Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 498.002
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 498.002
Proposed Amendments: Rules in 635-008, 635-010, 635-045, 635-047, 635-051, 635-052, 635-053, 635-054, 635-060, 635-100
Last Date for Comment: 8-8-08
Summary: Amend rules regarding the harvest of game birds including 2008–09 season dates, open areas and bag limits and to allow the continuation of control methods currently allowed under Federal permits for all migratory birds and to implement the Nest and Egg Depredation Order for resident Canada geese. The department may allow the destruction of nests and/or eggs by authorized federal agencies and their permittees for the purposes of pubic health and safety, nuisance, and depredation control.
Rules Coordinator: Teri Kucera
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

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Rule Caption: Amend rules relating to the Cervid Surveillance Disease List.

Date:	Time:	Location:
8-8-08	8 a.m.	3406 Cherry Ave N Salem, OR 97303

Hearing Officer: Fish and 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: 8-8-08
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.
Rules Coordinator: Teri 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 to expand the list of Controlled species.

Date:	Time:	Location:
8-8-08	8 a.m.	3406 Cherry Ave N Salem, OR 97303

Hearing Officer: Fish and 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: 8-8-08
Summary: Amend rules to expand the "Controlled Species" classification list.
Rules Coordinator: Teri Kucera
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

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Rule Caption: Adopt rules relating to Wildlife Management Plan for black-tail deer.

Date:	Time:	Location:
8-8-08	8 a.m.	3406 Cherry Ave N Salem, OR 97303

Hearing Officer: Commission Staff
Stat. Auth.: ORS 183 & 496
Stats. Implemented: ORS 183 & 496
Proposed Adoptions: Rules in 635-195
Last Date for Comment: 8-8-08
Summary: Adopt rules relating to Wildlife Management Plan for black-tail deer.
Rules Coordinator: Teri 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: Application fee for the Underproductive Forestland Tax Credit program is now an eligible project cost.
Stat. Auth.: ORS 315 & 526
Stats. Implemented: ORS 315.104, 315.106 & HB 3364 (2007)
Proposed Amendments: 629-023-0420, 629-023-0430, 629-023-0440, 629-023-0450
Last Date for Comment: 7-22-08
Summary: Amends the rules for the 50% under productive Forestland Conversion Tax Credit consistent with the 2007 Legislative Assemble HB 3364 amending the governing statutes 315.104 and 315.106. HB 3364 made the application fee (for filing a written request for a preliminary certificate) an eligible reforestation project cost. Other amendments to the rules specify that the application fee is due in the amount in effect on the date the application is filed and that multiple project areas must be approved by the State Forester prior to the application for the preliminary certificate. Questions specific to the rules may be directed to Steve Vaught at 503-945-7393 or svaught@odf.state.or.us
Rules Coordinator: Gayle Birch
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

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

Rule Caption: CMS regulations about payment to and from certain public entities.

Date:	Time:	Location:
7-21-08	10:30 a.m.	HSB Bldg. Rm. 137 C 500 Summer St. NE Salem, OR 97301

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Proposed Adoptions: 410-120-0035
Proposed Repeals: 410-120-0035(T)
Last Date for Comment: 7-30-08
Summary: The **General Rules Program** administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. Having temporarily adopted 410-120-0035, DMAP will permanently adopt the rule 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. OAR 410-120-0035 informs 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: Terminology and process changes transitioning to new Medicaid Management Information System (MMIS).

Date:	Time:	Location:
7-21-08	10:30 a.m.	HSB Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010, 409.050, 409.065 & 409.110
Stats. Implemented: ORS 414.025 & 414.065
Proposed Amendments: 410-120-0000, 410-120-1140, 410-120-1180, 410-120-1195, 410-120-1260, 410-120-1280, 410-120-1340, 410-121-0040, 410-121-0060, 410-121-0140, 410-121-0150, 410-121-0157, 410-121-0200, 410-121-0320, 410-122-0040, 410-125-0125, 410-125-0210, 410-125-0220, 410-125-0360, 410-125-0400, 410-125-0600, 410-125-0640, 410-125-0720, 410-125-1070, 410-127-0080, 410-129-0080, 410-132-0100, 410-133-0040, 410-133-0090, 410-133-0100, 410-133-0140, 410-133-0220, 410-133-0280, 410-136-0240, 410-136-0260, 410-136-0300, 410-141-0000, 410-141-0020, 410-141-0220, 410-146-0021, 410-146-0060, 410-146-0080, 410-146-0085, 410-146-0086, 410-146-0100, 410-146-0120, 410-146-0130, 410-146-0140, 410-146-0340, 410-146-0380, 410-146-0440, 410-147-0020, 410-147-0060, 410-147-0120, 410-147-0125, 410-147-0140, 410-147-0160, 410-147-0180, 410-147-0200, 410-147-0220, 410-147-0320, 410-147-0340, 410-147-0360, 410-147-0460, 410-147-0480, 410-147-0540, 410-147-0560, 410-147-0610, 410-147-0620
Last Date for Comment: 7-25-08
Summary: The Department is converting to a new computer system called Medicaid Management Information System (MMIS). DMAP will amend administrative rules to change terminology and other process aspects related to MMIS for the following service programs: General Rules, Pharmaceutical Services, Durable Medical Equipment, Prosthetics, Orthotics and Supplies, Hospital Services, Home Health Services, Speech-language Pathology, Audiology and Hearing Aid, School Based Health Services, Medical Transportation Services, Private Duty Nursing, Oregon Health Plan (Managed Care) Services, American Indian/Alaska Native Services, and Federally Qualified Health Centers/Rural Health Clinics.
Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301
Telephone: (503) 945-6927

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

Rule Caption: Nursing Facility Staffing and Definitions.

Date:	Time:	Location:
7-21-08	2 p.m.	Human Services Bldg., Rm. 137ABC 500 Summer St. NE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410.070, 410.090, 441.055, 441.073 & 441.615
Stats. Implemented: ORS 410.070, 410.090, 441.055, 441.073 & 441.615
Proposed Amendments: 411-085-0005, 411-086-0100
Proposed Repeals: 411-085-0005(T), 411-086-0100(T)
Last Date for Comment: 7-23-08, 5 p.m.
Summary: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to permanently adopt the March 1, 2008 temporary amendments to:

• OAR 411-085-005 that updated the definition for nursing assistant and added a definition for restorative aid; and

• OAR 411-086-0100 that increased the minimum staffing requirement of nursing assistants assigned to provide resident services in licensed nursing facilities for the purpose of maximizing quality outcomes for nursing facility residents.

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 Oregon State Police,
Office of State Fire Marshal
Chapter 837

Rule Caption: Changes to amend Rule with reference to mid-cycle amendments to the 2007 Oregon Fire Code.

Date:	Time:	Location:
7-15-08	9 a.m.	4760 Portland Rd. NE Salem, OR 97305

Hearing Officer: John Caul
Stat. Auth.: ORS 476.030
Stats. Implemented: ORS 476.030
Proposed Amendments: 837-040-0020
Last Date for Comment: 7-15-08
Summary: Rule changes are needed to correct any immediate life threatening situations or conflicts in the codes and to update references to nationally recognized standards since the adoption of the 2007 Oregon Fire Code.

Any costs associated with these changes are necessary to the health and safety of the occupants or the public.
Rules Coordinator: Pat Carroll
Address: Department of Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305
Telephone: (503) 373-1540, ext. 276

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Department of Revenue
Chapter 150

Rule Caption: Corporation tax and credits; insurance apportionment; inheritance tax credit; cigarette/other tobacco tax; background checks.

Date:	Time:	Location:
7-22-08	10 a.m.	Dept. of Revenue, Fishbowl Conf. Rm. 955 Center St NE Salem OR

Hearing Officer: Staff
Stat. Auth.: ORS 305.100, 118.140 & 181.534
Stats. Implemented: ORS 118.140, 181.534, 305.270, 314.250, 314.400, 314.403, 314.665, 315.356, 317.368, 317.660, 320.305, 320.308, 323.320 & 323.505
Proposed Adoptions: 150-118.140, 150-118.140(2)(a), 150-181.534, 150-315.356, 150-314.403, 150-320.308, 150-323.505(2)
Proposed Amendments: 150-314.400(1), 150-314.665(4), 150-317.660(2), 150-320.305
Proposed Repeals: 150-305.270(2), 150-314.250, 150-317.368(1), 150-317.368(6)
Proposed Ren. & Amends: 150-323.320(2) to 150-323.320-(C)
Last Date for Comment: 7-22-08, 5 p.m.
Summary: 150-118.140 and 150-118.140(2)(a) implement provisions of Oregon Laws 2008, chapter 28 (HB 3618), which provides a credit against Oregon inheritance tax for natural resource or fishing property that meets certain requirements. The rules define terms and provide guidance on filing original or amended returns.

150-181.534 explains the department's process for conducting criminal background checks for 'subject persons.'

150-314.403 explains how a penalty for a "listed transaction understatement" will be applied to amended tax returns that report such an understatement.

150-315.356 clarifies how a taxpayer calculates a business energy tax credit and notifies the department when receiving federal grant money in connection with a facility certified for a business energy tax credit under ORS 315.354.

150-320.308 is adopted to provide guidance on what is exempt from the state lodging tax and to clarify that employees of federal governmental agencies and federal instrumentalities that are on official business are exempt from this tax. Portions of 150-320.305 are moved to this rule.

150-314.400(1) is amended to describe the one month late-filing criteria for returns required to be filed more frequently than annually.

150-314.665(4) is based on a Multistate Tax Commission (MTC) recommended regulation that was updated in 2007. The revised rule provides that costs incurred by a third party on behalf of the taxpayer are to be included in the calculation of direct costs when determining the costs of performance for purposes of income apportionment.

150-317.660(2) is amended to include a statement that the wage and commission factor is not used in the insurance apportionment factor calculation for tax years beginning on or after January 1, 2007.

150-320.305 is amended to clarify when non-optional lodging expenses are included in the amount that is subject to the state lodging tax and to provide guidance on taxation of lodging packages offered by lodging providers. Portions of the rule are moved to a new rule, 150-320.308.

150-323.505(2) is amended to clarify how the wholesale sales price is determined for purposes of the Other Tobacco Products tax for transactions between any unrelated, unaffiliated parties, or between related, affiliated parties (i.e. — a manufacturer and a related distributor, where that distributor is paying the tax).

150-323.320(2) is amended and renumbered to 150-323.320(C). This amendment explains the process for refunding stamps affixed to cigarettes that are no longer approved for sale in Oregon, unsold cigarettes, and clarifies the processes the department currently takes to accept and act on claims for refund of the tax stamp value.

150-305.270(2), 150-314.250, 150-317.368(1) and 150-317.368(6) are obsolete and are proposed for repeal.

Rules Coordinator: Debra L. Buchanan

Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555

Telephone: (503) 945-8653

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Rule Caption: Tax deferral, exemption, special assessments, roll corrections, central assessment and industrial property definitions and calculation.

Date:	Time:	Location:
7-22-08	10 a.m.	Dept. of Revenue, Fishbowl Conf. Rm. 955 Center St NE Salem OR

Hearing Officer: Staff

Stat. Auth.: ORS 305.100, 306.126, 308.205, 308.290, 308.655, 308.724 & 457.440

Stats. Implemented: ORS 307.495, 308.146, 308.205, 308.290, 308.555, 306.126, 307.175, 307.286, 307.289, 307.804, 308.704, 308.712, 311.205, 311.668, 457.440, 294.381, 294.930, 308.290 & 308.890

Proposed Adoptions: 150-307.495, 150-308.146(8), 150-308.205-(G), 150-308.290-(A), 150-308.555

Proposed Amendments: 150-306.126(1), 150-307.175, 150-307.286, 150-307.289, 150-307.804, 150-308.704, 150-308.712,150-311.205(1)(b)-(A), 150-311.668(1)(a)-(A), 150-311.668(1)(a)-(B), 150-457.440(9)

Proposed Repeals: 150-294.381(3), 150-294.930(2), 150-308.290(3), 150-308.290(5), 150-308.890

Last Date for Comment: 7-22-08, 5 p.m.

Summary: 150-307.495 defines the meaning of "acquired" as it relates to newly built farm labor camps and associated child care facilities. The rule clarifies the due date for filing a claim for exemption is in these situations.

150-308.146(8) prescribes the calculations to be used when an assessor reduces maximum assessed value (MAV) due to a building being demolished or removed from property. The rule is needed to prescribe the calculations procedure so as to maintain statewide consistency.

150-308.205-(G) defines the effective tax rate used for the valuation of specially assessed low income housing.

150-308.290-(A) describes the circumstances and methods used by the department and counties for granting, denying, or revoking property tax return extensions by the department and assessors, including extensions for multiple locations by the department.

150-308.555 clarifies how the department determines the unit of property when multiple legal entities participate in the operation of a centrally assessed business subject to property tax assessment under ORS 308.505 to 308.665.

150-306.126(1) is amended to clarify the process used to determine appraisal responsibility of account(s) comprising a unit of industrial property. Appraisal responsibility will be either the county or the Department of Revenue.

150-307.175 is amended to reflect changes enacted by Oregon Laws 2007, chapter 885 (HB 3488). The rule describes alternative energy systems that qualify for the exemption and give examples of exempt and taxable property associated with those systems.

150-307.286 and 150-307.289 are amended to reflect changes enacted by Oregon Laws 277, chapter 604 (HB 2023) relating to property tax exemptions available to individuals performing active duty military service. 150-307.286 includes additional qualifying service and filing requirements and describes the property to which the exemption applies. 150-307.289 defines terms.

150-307.804 clarifies that real and personal property "located at" a rural health care facility may qualify for exemption. To clarify that the rural health care facility owner may file for exemption on behalf of persons whose property is "located at" the facility.

150-308.704 defines "assisted living facility" and "residential care facility" for the purpose of special assessment of government restricted multi-unit rental properties.

150-308.712 is amended to reference the new "effective tax rate" rule OAR 150-308.208-(G), so as to provide guidance for determining the specially assessed value (SAV) of government restricted multi-unit rental housing. It further clarifies the use of proforma income and expense statements for recently constructed properties and prohibits the use of market derived rents for the purposes of determining the SAV.

150-311.205(1)(b)-(A) provides that, in general, an error in valuation judgment cannot be corrected. Oregon Laws 2007, chapter 590 (SB 814) amended ORS 311.205 to allow such corrections if the value has been appealed to tax court and the correction would result in reduction of the tax. This amendment brings the rule into conformity with the statute.

150-311.668(1)(a)-(B) and 150-311.668(1)(a)-(A) are amended to explain the filing requirements and qualifications that an applicant must meet in the year of application in order to have property taxes deferred under the Senior Citizen's Property Tax Deferral program and the Disabled Citizen's Property Tax Deferral program. To update income limits to reflect 2008 limit

150-457.440(9) is amended to prescribe the methods used by the assessor to calculate the amounts of division of tax for urban renewal. The division of tax calculation method is based in part on whether a plan is "standard rate" or "reduced rate." This amendment clarifies that substantial plan amendments do not change the rate method used for a plan by amending the definition of "reduced rate plan" and "standard rate plan."

150-294.381(3) is repealed as obsolete due to changes to ORS 294.381 enacted by 2007 Oregon Laws chapter 894 (SB 808).

150-294.930(2) is repealed as obsolete. Oregon laws 2007, chapter 198 (HB 2238) amended ORS 294.930 to eliminate the requirement that councils of governments file a copy of their budgets with the department.

150-308.290(3) and 150-308.290(5) are repealed and material transferred to a new rule, 150-308.290-(A). Oregon Laws 2007, chapter 613 (HB 2228) amended 308.290 to increase authority of county assessors to grant real and personal property return extensions, and to authorize the department to grant a company an extension when the company is required to file in multiple counties.

150-308.890 is repealed due to repeal of the relating statute.

Rules Coordinator: Debra L. Buchanan
Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Rule Caption: Disclosure; estimated tax; military subtraction; kicker; farm capital gain; real estate sales withholding; biomass credit.

Date:	Time:	Location:
7-22-08	10 a.m.	Dept. of Revenue, Fishbowl Conf. Rm. 955 Center St NE Salem OR

Hearing Officer: Staff
Stat. Auth.: ORS 305.100, 305.193 & 314.258
Stats. Implemented: ORS 291.349, 305.193, 314.258, 315.141, 315.144, 316.037, 316.045, 316.119, 316.587, 316.791 & 316.846
Proposed Adoptions: 150-291.349, 150-315.141, 150-315.144, 150-316.045, 150-316.119, 150-316.791,150-316.846
Proposed Amendments: 150-305.193, 150-314.258, 150-316.037, 150-316.587(5)(d), 150-316.587(8)-(A)
Proposed Repeals: 150-316.NOTE
Last Date for Comment: 7-22-08, 5 p.m.
Summary: 150-291.349 describes the procedure used by the department for calculating certain surplus refunds.

150-315.141 and 150-315.144 are adopted to provide definitions and clarify requirements and procedures related to the tax credit available to producers or collectors of biomass and the transfer of the credit.

150-316.045 clarifies requirements for qualifying for the reduced tax rate on capital gain from the sale of a farming activity. The rule defines what is meant by 1) substantially complete termination of a farming activity, and 2) predominant use of an asset in a farming business. Examples are provided.

150-316.791 provides a definition of "military service", "home of the taxpayer", "away from home", and "three consecutive weeks" for purposes of exempting certain compensation of military service members under ORS 316.791.

150-316.846 provides a definition of "housing expense" for purposes of the subtraction allowed for scholarships under ORS 316.846.

150-305.193 is amended to explain that a taxpayer who electronically transmits his or her tax return is considered to have given implied consent for the department to disclose information to the transmitter of the file when necessary to process the return.

150-314.258 is amended to reflect changes enacted by Oregon Laws 2008, chapter 54 (SB 1101) to requirements for withholding of tax on certain real estate transactions.

150-316.037 and 150-316.119 are amended and adopted, respectively, to move section (4) of the former to a more appropriate location in the latter.

150-316.587(5)(d) and 150-316.587(8)-(A) are amended to move section (1) of the former to a more appropriate location in the latter.

150-316.587(8)-(A) is also amended to clarify that recognition of income under IRC 6654 applies to shareholders of S corporations for purposes of calculating interest on the underpayment of estimated tax.

150-316.NOTE is repealed and relevant material is transferred to 150-291.349.

Rules Coordinator: Debra L. Buchanan
Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Department of State Lands
Chapter 141

Rule Caption: Rules for Granting Easements on Trust and Non-Trust Lands.

Date:	Time:	Location:
7-30-08	1–3 p.m.	Land Board Rm. State Lands Bldg. 775 Summer St NE Salem, OR
7-31-08	1–3 p.m.	Conference Rm., ODOT Region 4 Annex Bldg. 63085 N Hwy 97 Bend, OR 97701

Hearing Officer: Jeff Kroft
Stat. Auth.: ORS 183 & 273
Other Auth.: Oregon Constitution, Art. VIII, Sec. 5
Stats. Implemented: SB 311 & SB 82
Proposed Amendments: 141-122-0010 – 141-122-0120
Last Date for Comment: 8-15-08, 5 p.m.
Summary: These rules govern the granting of easements by the Department of State Lands (DSL). The amendments being proposed to these rules are being made to:

(1) Address the changes mandated by the enactment of SB 311 and SB 82 by the 2003 Legislative Assembly;

(2) Clarify a number of the provisions and processes contained in the currently adopted rules;

(3) Provide more flexibility to DSL and applicants for an easement; and

(4) Incorporate terms, conditions and procedures recommended by the Oregon Department of Justice to all of DSL's rules to ensure consistency among them.

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: Establishes Requirements for the Placement of Temporary Registration Permits.
Stat. Auth.: ORS 184.616, 814.619, 802.010, 803.615, 803.625, 803.650 & 803.655
Stats. Implemented: ORS 803.540, 803.615, 803.635, 803.650 & 803.655
Proposed Amendments: 735-032-0030
Last Date for Comment: 7-21-08
Summary: DMV has designed a temporary permit specifically for motorcycles and mopeds (Temporary Motorcycle Permit, DMV Form 735-309). The permit is smaller than other temporary permits and is made of a water-resistant material. It's designed to be displayed on the rear of a motorcycle or moped where the license plate is normally attached. DMV proposes to amend OAR 735-032-0030 to provide instructions for the placement of the new permit. Other amendments improve clarity and readability.

Text of proposed and recently adopted ODOT rules can be found at website http://www.oregon.gov/ODOT/CS/RULES/
Rules Coordinator: Lauri Kunze

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

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Rule Caption: Eyesight Check Content and Standards.
Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.070
Stats. Implemented: ORS 807.070
Proposed Amendments: 735-062-0050
Last Date for Comment: 7-21-08
Summary: DMV amended OAR 735-062-0050 effective January 1, 2008. In doing so we inadvertently left out a word that changes the meaning of a sentence. It is important to correct the error in the current wording. It should read: "DMV will not restrict a person whose vision is 20/40 or better to daylight driving only, unless in the written opinion of a licensed vision specialist, such a restriction is warranted." Other changes in the rule are made for clarity and ease in reading.

Text of proposed and recently adopted ODOT rules can be found at website http://www.oregon.gov/ODOT/CS/RULES/
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Driver and Motor Vehicle Services Division, 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: Disabled, abandoned and otherwise unattended vehicles on state highways.

Date:	Time:	Location:
7-21-08	9 a.m.	355 Capitol St NE, Rm. 122 Salem, OR

Hearing Officer: Leann McCormick
Stat. Auth.: ORS 184.616, 184.619 & 819.120
Stats. Implemented: ORS 819.120
Proposed Amendments: 734-020-0147
Last Date for Comment: 7-21-08
Summary: SB 567 of the 2007 regular session modified the description of when a vehicle parked or left unattended along a state highway would be considered a hazard or obstruction to motor vehicle traffic. These rule amendments reflect those modifications and clarify the definition of terms used in the rule.

Text of proposed and recently adopted ODOT rules can be found at website http://www.oregon.gov/ODOT/CS/RULES/
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301
Telephone: (503) 986-3171

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Rule Caption: Pedestrian Activity.
Stat. Auth.: ORS 184.616, 184.619 & 814.070
Stats. Implemented: ORS 814.070
Proposed Adoptions: 734-058-0010, 734-058-0020, 734-058-0030, 734-058-0040, 734-058-0050, 734-058-0060, 734-058-0070, 734-058-0080
Last Date for Comment: 7-21-08
Summary: SB 1084 of the 2008 special session grants an exception to a pedestrian committing the offenses of pedestrian with improper position upon a highway if the pedestrian does not impede traffic or create a traffic hazard, posts advance warning signs, wears high-visibility safety apparel in compliance with standards adopted by the Oregon Transportation Commission, and obtains a permit from the appropriate road authority. These rules would describe how a pedestrian would obtain a permit from the Department of Transportation for activities along a state highway.

Text of proposed and recently adopted ODOT rules can be found at website http://www.oregon.gov/ODOT/CS/RULES/
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Highway Division, 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: Conform the rules to existing statute changed by Senate Bill 350 (2007 Legislature).
Stat. Auth.: ORS 285A.075
Other Auth.: SB 350 (2007 Legislature)
Stats. Implemented: ORS 285B.320 - 582B.371
Proposed Adoptions: 123-011-0037
Proposed Amendments: 123-011-0025, 123-011-0027, 123-011-0030, 123-011-0035, 123-011-0040, 123-011-0045
Last Date for Comment: 7-22-08
Summary: The proposed administrative rule change addresses the statutory changes implemented in SB 350 (2007 Legislature). Rule changes include clarification of definitions, rule language and a change to a category within the application fee.
Rules Coordinator: Janelle Lacefield
Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: Conform the Oregon Business Development Fund rules to current statute.
Stat. Auth.: ORS 285A.075
Other Auth.: SB 350 (2007 Legislature)
Stats. Implemented: ORS 285B.200 - 285B.218
Proposed Amendments: 123-017-0008, 123-017-0010, 123-017-0015, 123-017-0020, 123-017-0025, 123-017-0030, 123-017-0035, 123-017-0055
Last Date for Comment: 7-22-08
Summary: The proposed administrative rule change addresses the statutory changes implemented in SB 350 (2007 Legislature). This division of rules was evaluated and changes were made to clarify rules, and some deletion and clarification of several definitions.
Rules Coordinator: Janelle Lacefield
Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: Conform the Capitol Access Program to current statute and clarify rule.
Stat. Auth.: ORS 285A.075
Other Auth.: SB 350 (2007 Legislature)
Stats. Implemented: ORS 285B.126 - 285B.147
Proposed Amendments: 123-018-0010, 123-018-0040, 123-018-0060, 123-018-0085, 123-018-0100, 123-018-0160
Last Date for Comment: 7-22-08
Summary: The proposed administrative rule change addresses the statutory changes implemented in SB 250 (2007 Legislature). Clarification of several definitions. Additional clarification of statutory authority given to the department in regards to loss reserve account interest.
Rules Coordinator: Janelle Lacefield
Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: Conform the Credit Enhancement Fund rules to current statute and clarify rule.
Stat. Auth.: ORS 285A.075
Other Auth.: SB 350 (2007 Legislature)
Stats. Implemented: ORS 285B.200 - 285B.218
Proposed Adoptions: 123-021-0025

Proposed Amendments: 123-021-0010, 123-021-0020, 123-021-0040, 123-021-0050, 123-021-0060, 123-021-0070, 123-021-0080, 123-021-0090, 123-021-0100, 123-021-0120, 123-021-0130, 123-021-0140
Proposed Repeals: 123-021-0030
Last Date for Comment: 7-22-08
Summary: The proposed administrative rule change addresses the statutory changes implemented in SB 350 (2007 Legislature). With deletion and clarification of several definitions. Deletion of the Borrow Preferences section 123-021-0030. Moved Qualified Business out of definitions into its own rule section.
Rules Coordinator: Janelle Lacefield
Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: Strategic Investment Program (SIP) Amendments and Elimination of Inoperative Tax Incentive Program Rules.
Stat. Auth.: ORS 285A.075 & 285C.615(7)
Stats. Implemented: ORS 285C.600 - 285C.626, 285C.639 & 307.123
Proposed Adoptions: 123-023-1250, 123-023-1525, 123-023-1550, 123-023-1950, 123-023-3000, 123-023-3100, 123-023-3200, 123-023-3300, 123-023-3400, 123-023-4000, 123-023-4100
Proposed Amendments: Rules in 123-023
Proposed Repeals: Rules in 123-105, 123-145
Last Date for Comment: 7-22-08
Summary: In addition to repealing administrative rule divisions (due to the operational sunset of Advanced Telecommunications Facilities Tax Credit and transfer of Vertical Housing Development Zone program to another state agency), as well as various enhancements to the Strategic Investment Program (SIP) division, this rulemaking would for SIP: (i) Permanently clear up issues related to a business firm's state application and the effect on the timing of new investments for tax treatment; (ii) Fulfill request of Oregon Economic & Community Development Commission in 2006 for applicant business firms proposing an eligible project to divulge any near-term potentially affecting any (other) in-state operations; (iii) Reverse historic delegation of SIP to Commission's Finance Committee – consistent with practice and rulemaking EDD 11-2008(Temp); (iv) Establish parameters, processes and assorted guidelines for the designation and use of Strategic Investment Zones, pursuant to Ch. 237, Or Laws 2005, and (v) Describe elements for how participating businesses will report employment and other data to OECD after the '09–'10 tax year for eventual use in the distribution of state funds to local communities, under Ch. 905, Or Laws 2007.
Rules Coordinator: Janelle Lacefield
Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Landscape Contractors Board
Chapter 808

Rule Caption: Adopts a fee for the Owner/Managing Employee Manual & license card reprints; updates public records requirements and other fees.

Date:	Time:	Location:
8-20-08	8 a.m.	Roth's IGA 1130 Wallace Rd NW Salem, OR

Hearing Officer: Michael A. Snyder
Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: 671.595, 671.650 & 192.440
Proposed Amendments: 808-001-0020, 808-003-0045, 808-003-0130
Last Date for Comment: 8-22-08, 5 p.m.
Summary: 808-001-0020 — Lists what a public records request must include and updates charges for specific types of records.

808-003-0045 — Clarifies that when a license phase is changed, the agency will issue a new license card at no cost; clarifies a landscaping business cannot advertise or perform services for which it is not licensed.

808-003-0130 — Adopts charge of $20 for replacement of license card.
Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 378-5909. ext. 223

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Rule Caption: Amended to meet new requirements and housekeeping.

Date:	Time:	Location:
8-20-08	8 a.m.	Roth's IGA 1130 Wallace Rd NW Salem, OR

Hearing Officer: Michael A. Snyder
Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.520, 671.540 & 671.571
Proposed Amendments: 808-002-0200, 808-002-0780, 808-002-0810, 808-003-0110
Proposed Repeals: 808-002-0900
Last Date for Comment: 8-22-08, 5 p.m.
Summary: 808-002-0200 — Removes decorative placement of rock from definition of Casual, Minor or Inconsequential.

808-002-0780 — Clarifies definition of Plan and Install to match definition of Install in OAR 808-002-0455.

808-002-0810 — Removes draining water from an existing irrigation system from the definition of repair of irrigation system.

808-002-0900 — Deletes definition that is no longer used in the statute.

808-003-0110 — Clarifies the Probationary All Phase Plus Backflow landscape contracting business license must obtain a $15,000 bond, irrevocable letter of credit or deposit.
Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 378-5909, ext. 223

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Rule Caption: Amends requirement for direct supervision of unlicensed employees by the landscape construction professional.

Date:	Time:	Location:
8-20-08	8 a.m.	Roth's IGA 1130 Wallace Rd NW Salem, OR

Hearing Officer: Michael A. Snyder
Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.540(15) & (16)
Proposed Amendments: 808-002-0328, 808-003-0018
Last Date for Comment: 8-22-08, 5 p.m.
Summary: 808-002-0328 — Clarifies direct supervision requirement.

808-003-0018 — Explains verification requirement for direct supervision.
Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 378-5909, ext. 223

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Oregon Department of Education
Chapter 581

Rule Caption: Formula for calculation of funding to be received by a qualified private alternative education program.

Date:	Time:	Location:
7-23-08	1 p.m.	Oregon Dept. of Education 255 Capitol St. NE Salem, OR 97310

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 327.125, 336.635 & 2007 OL Ch. 846, Sec. 6
Stats. Implemented: ORS 336.615 - 336.665 & 2007 OL Ch. 846
Proposed Adoptions: 581-023-0012
Last Date for Comment: 7-23-08, 5 p.m.
Summary: House Bill 2040 (2007).
Rules Coordinator: Paula Merritt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5746

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Rule Caption: Clarifies calculation for State School Fund distribution amounts in response to Secretary of State audit.

Date:	Time:	Location:
7-23-08	1 p.m.	Oregon Dept. of Education 255 Capitol St. NE Salem, OR 97310

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 327.125 & 336.635
Stats. Implemented: ORS 327.006 - 327.133 & 336.615 - 336.665
Proposed Amendments: 581-023-0006, 581-023-0008
Last Date for Comment: 7-23-08, 5 p.m.
Summary: Clarifies appropriate use of instructional and other classroom assistants in calculating group size for purposes of funding distribution to alternative education programs. Clarifies what constitutes one-hald day for purposes of determining withdrawal status students.
Rules Coordinator: Paula Merritt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5746

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Oregon Health Licensing Agency
Chapter 331

Rule Caption: Amend fee schedule based on revised agency cost allocation methodology.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 688.715 & 688.728
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 688.715 & 688.728
Proposed Amendments: 331-105-0030
Last Date for Comment: 7-22-08, 5 p.m.
Summary: Fee reductions proposed; standardization of administrative fees implemented.

The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Board of Athletic Trainer's 222 registrants support approximately 1.83% of the overall agency budget.
Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

Rule Caption: Amend fee schedule based on revised agency cost allocation methodology; other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 690.550 & 690.570
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 690.550 & 690.570
Proposed Amendments: 331-205-0020, 331-205-0030, 331-215-0000, 331-215-0010, 331-220-0020
Last Date for Comment: 7-22-08, 5 p.m.
Summary: Fee reductions proposed, increased service adjustments for application and temporary permits and standardization of administrative fees implemented. Distinguishes technician categories between ear lobe piercing and "body" piercing service providers.

The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Body Piercing Licensing Program is supported by approximately 714 payees (applicants, technicians, facility owners and permit holders) that support approximately 2.50% of the overall agency budget.
Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

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Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 680.525, 680.530 & 680.656
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 680.525, 680.530 & 680.656
Proposed Amendments: 331-405-0030, 331-415-0000, 331-415-0010
Last Date for Comment: 7-22-08, 5 p.m.
Summary: Fee reductions proposed, increased service adjustments for application and standardization of administrative fees implemented.

The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All

practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Board of Denture Technology's 112 licensees support approximately 1.71% of the overall agency budget.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

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Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 690.385, 690.405 & 690.415
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 690.385, 690.405 & 690.415
Proposed Amendments: 331-505-0000, 331-505-0010, 331-525-0000, 331-530-0000, 331-565-0000, 331-570-0000
Last Date for Comment: 7-22-08, 5 p.m.
Summary: Fee reductions proposed; standardization of administrative fees implemented.

The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists licensees, totaling 1,155 practitioners and businesses, support approximately 3.18% of the overall agency budget.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

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Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 694.055, 694.125 & 694.185
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 694.055, 694.125 & 694.185
Proposed Amendments: 331-601-0000, 331-601-0010, 331-601-0020, 331-630-0000
Last Date for Comment: 7-22-08, 5 p.m.
Summary: The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Advisory Council on Hearing Aids 468 licensees (permanent and temporary status) support approximately 2.18% of the overall agency budget.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

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Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 688.830 & 688.834
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 688.830 & 688.834
Proposed Amendments: 331-705-0060
Last Date for Comment: 7-22-08, 5 p.m.
Summary: The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Respiratory Therapist Licensing Board's 1,600 licensees support approximately 3.68% of the overall agency budget.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

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Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 675.405
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 675.405
Proposed Amendments: 331-800-0020
Last Date for Comment: 7-22-08
Summary: The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, stream-

lines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Sex Offender Treatment Board was newly established by the 2007 Legislative Assembly, with an effective date of legislation July 2007. The agency and board have established initial operating rules and have filed permanent rules as of June 1, 2008. To date the agency has not issued any certifications. This certification is a voluntary title act; certification is not required to practice. Revision to the current fee structure is needed to recoup actual and necessary costs associated with continued administration of the program. Based on projection during the legislation session, it is projected that a approximately 80 to 110 professionals may acquire certification; program costs is projected to account for approximately 1.90% of the overall agency budget. The ramp up period for this board that commenced following board member appointments November 2007 will conclude as of September 1, 2008, at which time the Board's revised cost allocation will be implemented to collect sufficient revenues to cover actual and necessary costs.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

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Oregon Health Licensing Agency,
Board of Cosmetology
Chapter 817

Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 690.085 & 690.235
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 690.085 & 690.235
Proposed Amendments: 817-030-0020, 817-035-0010, 817-035-0050, 817-040-0003
Last Date for Comment: 7-22-08, 5 p.m.
Summary: The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Board of Cosmetology's more than 70,000 authorization holders support approximately 79.39% of the overall agency budget. Over the last two biennia the board has not been paying the cost of its direct/indirect assessments, but has been subsidizing increased costs and inflation factors through spend down of the carry over balance from previous biennia. Cost adjustments are necessary to recoup actual and necessary expenses and align this board with its overall consumption of agency resources.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, Board of Cosmotology, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

Oregon Health Licensing Agency,
Board of Licensed Direct Entry Midwifery
Chapter 332

Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 687.425, 687.435 & 687.485
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 687.425, 687.435 & 687.485
Proposed Amendments: 332-020-0000, 332-020-0020
Last Date for Comment: 7-22-08, 5 p.m.
Summary: Fee reductions proposed, increased service adjustments for application and standardization of administrative fees implemented.

The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practitioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Board of Direct Entry Midwifery's 54 licensees support approximately 1.63% of the overall agency budget.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, Board of Direct Entry Midwifery, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287
Telephone: (503) 373-2088

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Oregon Health Licensing Agency,
Sanitarians Registration Board
Chapter 338

Rule Caption: Amend fee schedule based on revised cost allocation methodology; and other technical adjustments.

Date:	Time:	Location:
7-23-08	9 a.m.–12 p.m.	Rhoades Conf. Rm., Suite 320 700 Summer St. NE Salem, OR 97301

Hearing Officer: Bert Krages
Stat. Auth.: ORS 700.080 & 700.100
Other Auth.: ORS 676.615 & 676.625
Stats. Implemented: ORS 700.080 & 700.100
Proposed Amendments: 338-005-0030, 338-010-0038, 338-010-0050
Last Date for Comment: 7-22-08, 5 p.m.
Summary: The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis, evaluating expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program, and overall agency operational costs, state agency assessments and inflation factors.

A new cost allocation methodology is being implemented and all fees adjusted agency wide based on the results of the analysis. The new structure simplifies the agency's accounting systems, streamlines business processes, and standardizes specific administrative fees, such as a monthly delinquency renewal fee in lieu of a variable annual flat rate, replacement fees, and official affidavits. All practi-

tioner and business licenses have been extended from one-year to a two-year period as a cost saving and streamlining measure.

The Environmental Health Registration Board's 334 registrants support approximately 2% of the overall agency budget.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, Sanitarians Registration Board, 700 Summer St. NE, Suite 320, Salem, OR 97310
Telephone: (503) 373-2088

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Oregon Liquor Control Commission
Chapter 845

Rule Caption: Adopt, amend, repeal rules modernizing and streamlining the food service requirements for full on-premises licenses.

Date:	Time:	Location:
8-5-08	10 a.m.–12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman
Stat. Auth.: ORS 471, 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.168, 471.175, 471.182, 471.190(4) & 471.313
Proposed Adoptions: 845-006-0459
Proposed Amendments: 845-005-0320, 845-006-0460, 845-006-0461, 845-006-0462, 845-006-0463, 845-006-0464, 845-006-0465, 845-006-0466, 845-006-0469
Proposed Repeals: 845-005-0340, 845-006-0467, 845-006-0468
Last Date for Comment: 8-19-08
Summary: This package contains the rules describing the food service requirements for the five categories of full on-premises sales licensees who are authorized to sell distilled liquor by the drink. As mandated by statute, there are certain food service requirements for: commercial establishments, private clubs, public passenger carriers, other public locations, and caterers. This package also contains the rules describing the food service requirements for TSL's (temporary sales licenses). The proposed rule amendments include specific recommendations from the Business Partners Joint Steering Committee such as: eliminating the minimum table size requirement; eliminating the "cook on duty" requirement; revising the definition of "distinctly different" to allow similar items with different ingredients or prepared differently (to allow for more flexibility); eliminating the requirement for table settings during meal times; and rather than relying on percentage of food vs. alcoholic beverage sales, clarifying what is considered minimum food service and applying it equally throughout the food service rules. With the goal of making all of the food service rules easier to understand and to follow, staff are proposing additional simplifying amendments including: revising the definition of "regular meal" to include more principal items and allow more flexibility with side dishes; eliminating the need for math calculations to figure out the minimum number of tables required by setting a fixed minimum for dining tables; eliminating the language regarding buddy bars; adopting a uniform food standard for all F-PL's (Full On-Premises Public Location Sales Licensees); clarifying what is considered "discouraging food service"; and creating a new definitions rule where the definitions of terms used throughout the food service rules are standardized.
Rules Coordinator: Jennifer Huntsman
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
Telephone: (503) 872-5004

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Oregon Medical Board
Chapter 847

Rule Caption: Grant authority to Board Executive Director to approve Interim Stipulated Orders.
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265 & 677.275
Proposed Adoptions: 847-001-0030
Last Date for Comment: 7-28-08
Summary: Proposed rule grants authority to Board's Executive Director to approve Interim Stipulated Orders (limitation on license), so that Orders may become public information and be released to hospitals and health care facilities, in the interest of protecting the public.
Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2713

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Modifies effective date of ORP election and provides for transfer of all accounts to ORP.

Date:	Time:	Location:
7-8-08	2 p.m.	PERS Headquarters 11410 SW 68th Pkwy Tigard, OR 97223

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 243.800
Proposed Amendments: 459-005-0310
Last Date for Comment: 7-18-08
Summary: The rule modifications clarify the effective date of an employee's election to participate in the Oregon University System Optional Retirement Plan (ORP) is the first of the month following six months of employment. They also clarify the definitions of the accounts subject to transfer to the ORP. The modifications establish that a member's request to transfer an account to the ORP pursuant to ORS 243.800(6) will be considered a request to transfer all accounts the member has in PERS to the ORP and administered as such by PERS unless the member limits the request to a specific account.
Rules Coordinator: Daniel Rivas
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281
Telephone: (503) 603-7713

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Oregon University System,
Portland State University
Chapter 577

Rule Caption: The Schedule of Fines and Fees for General Services and other charges.
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 352.360
Proposed Amendments: 577-060-0020
Last Date for Comment: 7-10-08
Summary: The proposed amendment establishes updated fees, charges, fines, and deposits for General Services for the 2008–2009 Fiscal year. It is in the best interest of the general public for the State of Oregon that certain University services are self-sustaining. The amendment to this rule will permit the University to recover in fees the cost of providing various administrative and academic services.
Rules Coordinator: Tanja Dill
Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207
Telephone: (503) 725-3701

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Oregon University System,
Western Oregon University
Chapter 574

Rule Caption: Revisions to health requirements for international students, special course fees and general service fees.
Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Proposed Amendments: 574-035-0005, 574-050-0005
Last Date for Comment: 7-21-08

Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees, and revisions to health requirements for international students.
Rules Coordinator: Debra L. Charlton
Address: Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361
Telephone: (503) 838-8175

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Oregon Watershed Enhancement Board
Chapter 695

Rule Caption: Proposed updates to grant administration rules to benefit OWEB grant program implementation.

Date:	Time:	Location:
7-15-08	2 p.m.	State Lands Bldg. Mill Creek Rm. 775 Summer St. NE Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.351 - 541.401
Proposed Adoptions: Rules in 695-004
Proposed Amendments: Rules in 695-005, 695-010, 695-035, 695-040
Last Date for Comment: 8-1-08, 5 p.m.
Summary: OWEB is proposing rule amendments related to the administration of the OWEB grant program, including landowner agreement requirements contained in 695-005-0060(4) and 695-005-0030(4); grant amendment requirements contained in in 695-005-0050(1); the ability of the Director to enter into rule waivers contained in 695-005-0070 and in divisions 10, 35, and 40; and the consistent use of the terms Director, Board, and effectiveness monitoring in divisions 5 and 10. OWEB is also proposing new rule language in division 4 that frames the ability of the OWEB Board to make watershed enhancement investments through the regular grant program or specific initiatives or programs. Public comment will be accepted on the proposed rules from July 7, 2008 through 5 p.m. on Friday, August 1, 2008. Copies of the rules will be available by July 7, 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

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of a Rulemaking to Adopt Rules Related to Small Generator Facility Interconnection.

Date:	Time:	Location:
8-13-08	9:30 a.m.	550 Capitol St. NE Main Hearing Rm., 1st Floor Salem, OR

Hearing Officer: Sarah K. Wallace
Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 756.060
Proposed Adoptions: 860-082-0005 – 860-082-0100
Last Date for Comment: 8-20-08, 5 p.m.
Summary: The proposed rules will impact regulated electric companies and customers who desire to connect a small generator facility of no more than 10 MW to the electrical system and either operate in parallel to the grid or sell excess power to the electric company. The proposed rules are necessary to facilitate small generator interconnection by standardizing interconnection requirements and procedures and by ensuring the safety and reliability of the distribution and transmission systems of the regulated electric company. These proposed rules are revised from the proposed rules noticed in the September 2007 Oregon Bulletin.

The most recent version of the proposed rules is available online at http://apps.puc.state.or.us/edockets/docket.asp?DocketID=14256
Rules Coordinator: Diane Davis
Address: Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551
Telephone: (503) 378-4372

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Amends rules regarding first aid cards and character questions, clarifies some definitions and other housekeeping issues.

Date:	Time:	Location:
7-23-08	1–3 p.m.	TSPC Office 465 Commercial St. NE Salem, OR 97301

Hearing Officer: Victoria Chamberlain
Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.430, 342.455 - 342.495 & 342.985
Proposed Amendments: 584-005-0005, 584-017-0120, 584-017-0130, 584-017-0251, 584-017-0261, 584-036-0010, 584-036-0055, 584-050-0015, 584-060-0012, 584-060-0014, 584-060-0051, 584-060-0062, 584-060-0162, 584-060-0171, 584-060-0181, 584-070-0111, 584-070-0112, 584-070-0271, 584-070-0310, 584-080-0002, 584-080-0012, 584-080-0022, 584-080-0151, 584-080-0152, 584-080-0153, 584-080-0161, 584-100-0006, 584-100-0011, 584-100-0051
Proposed Repeals: 584-050-0022
Last Date for Comment: 8-6-08, 4:30 p.m.
Summary: 1. Defines "all grade levels" and clarifies definition of "recent experience."

2. Amends licensure rules to eliminate the first aid card requirement.

3. Clarifies "character question clearance" on license applications.

4. Removes incorrect references and makes housekeeping amendments to several rules.

5. Repeals unnecessary rule.

Rules Coordinator: Victoria Chamberlain
Address: Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301
Telephone: (503) 378-6813

Board of Chiropractic Examiners
Chapter 811

Rule Caption: Clarifies that DC's can order but not perform contrast imaging with radio opaque substances.
Adm. Order No.: BCE 1-2008
Filed with Sec. of State: 5-29-2008
Certified to be Effective: 5-29-08
Notice Publication Date: 5-1-2008
Rules Amended: 811-030-0020
Subject: The changes to the x-ray rule clarifies chiropractic physicians can order but not perform contrast imaging with radio opaque substances.
Rules Coordinator: Dave McTeague—(503) 378-5816, ext. 23

811-030-0020
Scope of Radiography in the Chiropractic Practice

(1) The radiographic diagnostic aspect of Chiropractic practice shall include all standard radiographic procedures that do not conflict with ORS 684.025.

(2) All radiographs shall be of diagnostic quality. Radiographic films are subject to review by the Board to determine quality. Poor quality radiographs may result in disciplinary action.

(3) X-ray is not to be used for therapeutic purposes.

(4) Fluoroscopy shall not be used as a substitute for an initial radiographic study and shall be used only with documented clinical justification.

(5) Chiropractic physicians may order or refer patients for any diagnostic imaging study, including contrast studies using radio-opaque substances. Use of radio-opaque substances for diagnostic X-ray, other than by mouth or rectum, is not permitted.

(6) Pregnant females shall not be radiographed unless the patient's symptoms are of such significance that the proper treatment of the patient might be jeopardized without the use of such radiographs.

(7) All critical parts, i.e. fetus, eyes, thyroid gland and gonads, beyond the area of primary examination shall be shielded.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684
Hist.: 2CE 9, f. 10-16-70; 2CE 11, f. 6-20-72, ef. 7-1-72; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 2-1984, f. 8-14-84, ef. 9-1-84; 2CE 3-1985, f. 11-13-85, ef. 12-1-85; CE 7-1993, f. 12-9-93, cert. ef. 12-10-93; CE 2-1996(Temp), f. & cert. ef. 5-31-96; CE 3-1996, f. & cert. ef. 9-26-96; BCE 1-2008, f. & cert. ef. 5-29-08

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Board of Licensed Professional Counselors and Therapists
Chapter 833

Rule Caption: Revisions to Code of Ethics, Continuing Education, and Supervision requirements.
Adm. Order No.: BLPCT 1-2008(Temp)
Filed with Sec. of State: 5-28-2008
Certified to be Effective: 6-1-08 thru 11-27-08
Notice Publication Date:
Rules Amended: 833-020-0050, 833-025-0050, 833-025-0060
Rules Ren. & Amend: 833-060-0001 to 833-060-0010, 833-060-0001 to 833-060-0020, 833-060-0001 to 833-060-0030, 833-060-0001 to 833-060-0040, 833-060-0001 to 833-060-0050, 833-060-0001 to 833-060-0060, 833-060-0001 to 833-060-0070
Subject: 1. 833-020: The revision formalizes Board policy that requires supervisors of registered interns to have been licensed for at least three years. The Board approved this rule change on August 11, 2007.

2. 833-025 — Continuing Education: The revised rule defines clock hour and specifies how clock hours are granted for semesters and quarters, clarifies education content, changes how credits may be obtained, increases detail about approved programs and revises documentation requirements, The Board approved these rule changes June 2, 2006.

3. 833-060 — Code of Ethics: Rule revisions provide increased guidance to licensees and increases emphasis on child welfare and best practices. The Board approved these rule changes on June 2, 2006.
Rules Coordinator: Becky Eklund—(503) 378-5499, ext. 26

833-020-0050
Experience Requirements for Licensure as a Professional Counselor

To qualify for licensure as a professional counselor under ORS 675.715(3) and 675.720, an applicant shall have completed the equivalent of three years of full-time supervised counseling experience which shall consist of:

(1) The applicant must have completed no less than 2,400 supervised direct client contact hours of counseling.

(2) Direct client contact hours are defined as only those treatment hours that are therapeutic or a combination of assessment and subsequent therapeutic interactions with clients; and

(a) Must have been face to face with a client or clients, except that up to 200 client contact hours may have been via telephone;

(b) Must have been obtained after receipt of the qualifying graduate degree, except that up to 800 client contact hours may have been completed during the clinical portion of the qualifying degree program; and

(c) Must include no less than 480 post-degree client contact hours completed within 60 months immediately prior to the application for licensure.

(3) The supervision must have taken place concurrently, which means within the same calendar month as the completed direct client contact hours and:

(a) Must have been the result of a professional relationship between a qualified supervisor and a counselor. Such relationship involves discussions based on case notes, charts, records, and available audio or visual tapes. The supervisee presents assessments and treatment plans for the clients being seen. The supervisor focuses on the appropriateness of the plans and the supervisee's therapeutic skill. In contrast to consultation, the supervisor has the authority to direct treatment plans. In contrast to therapy, the supervisor will identify counter-transference issues and develop a plan for the supervisee to work through those issues independently.

(b) Must have been conducted in a professional setting, face to face, one to one, except:

(A) Up to 10 percent of the individual supervision hours may have been conducted by telephone;

(B) Up to 50 percent of the supervision may have been received in a group setting, which:

(i) Included no more than ten (10) supervisees for supervision taking place before July 1, 1998 or six (6) supervisees for supervision taking place after July 1, 1998;

(ii) Where the leadership did not shift from one supervisor to another; and

(iii) Was not a staff or team meeting, intensive training seminar, discussion group, consultation session, or quality assurance or review group.

(c) Must have totaled no less than two (2) hours of supervision for months where 45 or less direct client contact hours were completed; or totaled no less than three (3) hours of supervision for months where 46 or more direct client contact hours were completed.

(4) The supervisor, at the time of supervision must have:

(a) Held a master's degree in counseling or graduate degree judged equivalent by the Board;

(b) Completed three years of post-graduate supervised clinical experience as a licensed professional counselor or other mental health professional;

(c) Completed 30 clock hours of training in supervision theory and practice through post-master's workshops or post-master's graduate level academic coursework for any supervision hours provided after June 30, 1992; and

(d) Been certified as a National Certified Counselor (NCC), Certified Clinical Mental Health Counselor (CCMHC), Certified Rehabilitation Counselor (CRC); or Certified Career Counselor (CCC); or

(e) Held a license as a professional counselor in the State of Oregon or held an Oregon or other state certification or licensure judged comparable by the Board, such as Oregon standard school counselors or Oregon psychologist associates or those state licensed as clinical psychologists, clinical social workers, and marriage and family therapists;

(f) In lieu of subsections (a), (b), (c), (d), and (e), been an American Association for Marriage and Family Therapy approved supervisor, an approved clinical supervisor credentialed by the National Board of Certified Counselors, or diplomate of the American Pastoral Counselors Association.

(g) Been someone other than a spouse or relative by blood or marriage or a person with whom the applicant has or had a personal relationship.

Stat. Auth.: ORS 675.715 & 675.785
Stats. Implemented: ORS 675.715 & 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 2-1996, f. 10-30-96, cert. ef. 11-1-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2002, f. & cert. ef. 3-1-02; BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-025-0050
Continuing Education Requirements

(1) Effective after renewal date April 1, 1998, licensees shall complete 40 clock hours of approved continuing education every two license years, April 1 through April 1, as a condition of renewal on April 1 of even-numbered years, except:

(a) For the first renewal after initial licensure, if first renewal is on an even-numbered year which will require no continuing education hours; or after the second renewal after initial licensure, if second renewal is on an even-numbered year which will require only 20 clock hours completed between licensure and second renewal.

(b) Following Board approval of a petition for waiver or extension of time based on documentation showing that the licensee was prevented from completing the requirements because of serious illness or disability.

(c) Following a contractual agreement with the Board that the licensee will not be practicing counseling or marriage and family therapy for an extended period of time because the licensee is retired; on maternity leave; or voluntarily not working; and that the licensee will not resume practice without a Board-approved plan for participating in 20 clock hours of continuing education or clinical supervision.

(d) A "clock hour" shall be defined as one hour spent in a program meeting the requirements for continuing education. Clock hours exclude refreshment breaks, receptions and other social gatherings, and meals that do not include an approved program.

(e) For academic courses fifteen clock hours shall be granted for one semester hour; ten clock hours shall be granted for one quarter hour.

(f) The number of clock hours granted for a program offered by an approved provider, as defined in section (4) of this rule, will be determined by the definition of clock hour in this rule.

(2) Continuing education content must focus on increasing knowledge and/or skills in the following areas:

(a) For professional counselors:

(A) Counseling theory & techniques;

(B) Human growth and development;

(C) Social and cultural foundations in counseling;

(D) The helping relationship;

(E) Group dynamics in counseling;

(F) Life style and career development;

(G) Diagnostic appraisal/assessment of individuals;

(H) Research and evaluation;

(I) Professional orientation and ethics;

(J) Professional supervision training; or

(K) Disability and life transitions.

(b) For marriage and family therapists:

(A) Theory and techniques of marital and family therapy;

(B) Diagnostic appraisal and assessment of individuals in marital and family therapy;

(C) Human development and family studies;

(D) Ethics and professional orientation;

(E) Research;

(F) Professional supervision training; or

(G) Social and cultural foundations in marital and family therapy.

(3) Approvable continuing education credits may be obtained in the following ways:

(a) Continuing education activities with no limits on continuing education units.

(A) Attending college or university courses — 15 clock hours per semester credit and 10 clock hours per quarter credit.

(B) Seminars, workshops, conferences and/or trainings may be "live" or offered through distance learning technology. Distance learning trainings must be offered or approved by a provider acceptable to the Board, e.g., NBCC.

(C) Home study from approved providers must be offered or approved by a provider acceptable to the Board, e.g., NBCC.

(b) Continuing education activities for which you can obtain a maximum of 20 continuing education units within a two year period.

(A) Publication activities credits shall be awarded as follows.

(i) Five credits per article or review in a referred journal that is directly related to counseling.

(ii) Five credits per chapter in edited books, 20 credits for authorship of an entire book.

(iii) Five credits per 30 minutes of initial video production directly related to counseling.

(iv) Five credits for reviewing a book proposal.

(v) Five credits for each year of service on an editorial board of a professional counseling journal.

(B) Professional presentations. Credit is given for the initial research and development of a professional presentation. The number of credits given is twice the number of hours spent making the presentation.

(C) Receiving supervision. One credit/one clock hour for supervision received from a supervisor who meets the Board's standards on supervision.

(D) Leadership in the profession — 10 credits a year for the following:

(i) Serving as an officer of a state or national counseling organization;

(ii) Serving as a member of a state counseling/therapy licensing board or national certification board; or

(iii) Chairing a national counseling conference or convention.

(4) An approvable continuing education program is one designed and offered by an agency or institution which is recognized as an approved provider of continuing education units, e.g., NBCC. Approved programs include:

(a) Academic courses offered in accredited degree counseling or marriage and family therapy programs;

(b) Presentations sponsored by counseling related departments of accredited educational institutions; national, regional, state, or local professional organizations or associations; public or private human services agencies or organizations; or individuals that meet all of the following approved provider guidelines:

(A) Program is presented by competent individuals as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience. Presenters should have an identifiable involvement with human services;

(B) Program meets the professional needs of the licensee's intended clientele;

(C) Program has a minimum duration of one clock hour;

(D) Except for non-classroom distance learning, program is offered in a place that is accessible to persons with disabilities;

(E) Distance learning program includes mechanism for evaluation, measurement, or confirmation of exchange of information;

(F) Programs approved by organizations such as: National Association of Social Workers, National Board for Certified Counselors, Oregon Psychological Association, Commission on Rehabilitation Counselor Certification, Art Therapy Credentials Board and the Art, American Art Therapy Association, American Association for Marriage and Family Therapy, Commission of Rehabilitation Counselor Certification, and American Counseling Association.

(c) Content of programs are consistent with OAR 833-025-0050(2).

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.725 & 675.785
Hist.: LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-025-0060
Documentation and Submission of Continuing Education

(1) Licensees shall certify to the Board, at the time of annual renewal on even-numbered years, that the continuing education requirements were met by providing a summary list of continuing education activities/courses as described in OAR 833-025-0050(3).

(2) Licensees shall maintain documentation as proof that the licensee has satisfied the continuing professional education requirements and, if requested by the Board, will make them available for inspection. Documentation shall include proof of actual attendance, participation, certification, or completion as well as content, duration, and if relevant, provider such as:

(a) Academic transcripts;

(b) Dated certificates (originals or copies) of completion of training;

(c) Program/activity descriptions, including (but not limited to) written verification of professional services, copies of published works or other proof of publication, letter from president/director of organization in which professional activity was conducted.

(d) Signed statement of professional supervision by the individual providing the supervision.

(3) The Board will conduct an audit of the records of randomly selected licensees to verify actual participation, completion, and compliance with standards for content and providers of approved continuing professional

education. Failure to maintain or document actual completion of continuing professional education activities claimed, failure to make such records available to the Board for inspection, or falsification of reports may result in disciplinary action by the Board.

(4) Failure to document required hours, or certifying programs or supervision not meeting approval requirements, will result in non-renewal or, in the case of discovery after renewal, possible suspension of license.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.725
Hist.: LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-060-0010
General Purpose and Scope

(1) This code constitutes the standards against which the required professional conduct of licensed professional counselors and marriage and family therapists is measured. It has as its goal the welfare and protection of the individuals and groups with whom counselors and therapists work This code applies to the conduct of all licensees, registered interns and applicants, including the applicant's conduct during the period of education, training, and employment which is required for licensure. Violation of the provisions of this Code of Ethics will be considered unprofessional or unethical conduct and is sufficient reason for disciplinary action, including, but not limited to, denial of licensure.

(2) If ethical responsibilities appear to conflict with law, regulations, or other governing legal authority, licensees are to make known their commitment to their ethical responsibilities and take steps to resolve the apparent conflict. If demands of an organization with which a licensee is affiliated conflicts with any aspect of the Code of Ethics, the licensee must clarify the nature of the conflict, make known to the Board his or her commitment to this code and resolve the conflict in a way that permits adherence to this Code of Ethics.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.785
Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-060-0020
Responsibility

(1) A licensee's primary professional responsibility is to the client. A licensee makes every reasonable effort to advance the welfare and best interests of all clients for whom the licensee provides professional services. A licensee respects the rights of those persons seeking assistance and makes reasonable efforts to ensure that the licensee's services are used appropriately:

(2) A licensee recognizes that there are other professional, technical, and administrative resources available to clients. The licensee makes a reasonable effort to provide referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services or when the client requests a referral.

(3) Licensees do not give or receive commissions, rebates or any other form of remuneration when referring clients for professional services.

(4) A licensee seeks appropriate professional assistance for the licensee's own personal problems or conflicts that are likely to impair the licensee's work performance or clinical judgment.

(5) A licensee provides supervision only when the licensee's professional competence is sufficient to meet the needs of the trainee or intern. A licensee does not permit a trainee or intern under the licensee's supervision to perform, nor purport to be competent to perform, professional services beyond the trainee's or intern's level of training and accepts does not practice under the influence of alcohol or any controlled substance not prescribed by a physician, or if incapacitated by the use of intoxicants, drugs or controlled substances.

(6) A licensee does not practice when adversely influenced by either physical or emotional impairment that would interfere with their ability to provide professional services.

(7) A licensee does not violate any applicable statute or administrative rule regulating the practice of counseling or therapy or any other applicable laws, including, but not limited to, the reporting of abuse of children or vulnerable adults.

(8) A licensee does not condone or engage in discrimination on the basis of age, color, culture, disability, ethnicity, national origin, gender, race, religion, sexual orientation, marital status, or socioeconomic status.

(9) A licensee does not provide services to a client when the licensee's objectivity or effectiveness is impaired. If a licensee's objectivity or effectiveness becomes impaired during a professional relationship with a client, the licensee notifies the client that the licensee can no longer serve the client professionally and makes a reasonable effort to assist the client in obtaining other professional services.

(10) A licensee respects the right of a client to make decisions and helps the client understand the consequences of these decisions. A licensee advises a client that all decisions are the responsibility of the client.

(11) A licensee displays in a prominent place, available to clients, a Board issued license.

(12) A licensee obtains written informed consent from the client or legal representative of the client for rendering professional services. Informed consent constitutes informing the client as early in the therapeutic relationship as possible of the nature and anticipated course of therapy, services and approaches to be used, potential risks or experimental methods proposed, alternatives for treatment, fees, involvement of third parties, limits of confidentiality, and the client's right to accept or refuse any and all therapeutic treatment.

(13) A licensee makes available as part of the disclosure statement a bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:

(a) To expect that a licensee has met the minimum qualifications of training and experience required by state law;

(b) To examine public records maintained by the Board and to have the Board confirm credentials of a licensee;

(c) To obtain a copy of the Code of Ethics;

(d) To report complaints to the Board;

(e) To be informed of the cost of professional services before receiving the services;

(f) To be assured of privacy and confidentiality while receiving services as defined by rule or law, including the following exceptions:

(A) Reporting suspected child abuse;

(B) Reporting imminent danger to the client or others;

(C) Reporting information required in court proceedings or by client's insurance company or other relevant agencies;

(D) Providing information concerning licensee case consultation or supervision; and

(E) Defending claims brought by the client against licensee;

(g) To be free from being the object of discrimination on any basis listed in subsection (8) of this rule while receiving services.

(14) A licensee terminates a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests. Whenever possible prior to termination, a licensee provides pre-termination counseling, recommendations and alternatives for the client.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.785
Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-060-0030
Client Welfare

(1) Licensees strive to benefit those with whom they work and take care to do no harm. In their professional actions, licensees seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons and shall hold the welfare and interests of clients as primary.

(2) Licensees take reasonable steps to avoid harming their client, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(3) The primary obligation of licensees is to respect the integrity and promote the welfare of their clients, including treating the client at all times in a caring, fair, courteous and respectful manner. This is particularly true for vulnerable populations such as children, seniors or clients with disabilities.

(4) Licensees actively attempt to understand the diverse cultural backgrounds of the clients with whom they work. This includes, but is not limited to, learning how the licensee's own background and identity impacts the licensee's values and beliefs about the counseling process.

(5) Licensees do not engage in physical contact with clients when there is a possibility of physical or psychological harm from the contact.

(6) Licensees avoid actions or words that clients could reasonably interpret as demeaning or derogatory, including, but not limited to, coarse or harsh language directed at the client.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.785
Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-060-0040
Integrity

(1) A licensee acts in accordance with the highest standards of professional integrity and competence. A licensee is honest in dealing with clients, students, trainees, colleagues, related third parties, and the public.

(2) Licensees are aware of their influential positions with respect to students, employees, supervisees, and clients, and they avoid exploiting the trust and dependency of such persons. Licensees make every effort to avoid conditions and multiple relationships with clients that could impair professional judgment or increase the risk of exploitation. Such relationships include, but are not limited to, business or personal relationships, sexual relationship, relatives, students, employees, or supervisees.

(3) A licensee does not enter into an employer, supervisor, or other relationship where there is potential for exercising undue influence on any client. This includes the sale of services or goods that will exploit the client for financial gain or personal gratification of the licensee or a third party.

(4) A licensee shall not engage in or solicit sexual acts or a sexual relationship with a supervisee

(5) A licensee does not engage in or solicit sexual acts or a sexual relationship with a client or with individuals the licensee knows to be immediate relatives, guardians, supervisees, or significant others of current clients, or with a former client within three years since the rendering of professional services.

(6) A licensee does not engage in or solicit sexual acts or a sexual relationship with a former client after three years from the termination of services if such act or solicitation could exploit the client. Exploitation may be indicated by such factors as the time elapsed between the termination of the professional relationship and the beginning of the sexual relationship, nature and duration of therapy, circumstances of termination of professional relationship, client personal history, client's current mental status, likelihood of adverse impact on client, any statements or actions made by the licensee during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship, and whether the licensee attempted to protect the client by referral or consultation. Licensees do not accept as clients those with whom they have engaged in sexual intimacies.

(7) A licensee does not enter into an employment, business, supervisory, or personal relationship, or one that involves the exchange of goods and services, with a former client if exploitation can be demonstrated by review of such factors as amount of time that has passed, nature and duration of therapy, circumstances of termination of professional relationship, client's personal history, client's current mental status, likelihood of adverse impact on client, and whether client encouraged a post-treatment relationship during the professional relationship.

(8) A licensee does not allow an individual or agency that is paying for the professional services of a client to exert undue influence over the licensee's evaluation or treatment of the client. Regardless of the source of payment, the licensee's first obligation is to the client.

(9) A licensee does not engage in sexual or other harassment of a client, former client, or supervisee. A licensee does not engage in any form of communication or physical behavior that is sexually suggestive, seductive, or demeaning to the client or former client.

(10) A licensee does not use the counseling relationship to further personal, religious, political, sexual, or financial interests.

(11) A licensee informs a client of a divergence of interests, values, attitudes, or biases between a client and the licensee that is sufficient to impair their professional relationship. Either the client or the licensee may terminate the relationship.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.785
Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-060-0050
Confidentiality

(1) A licensee holds in confidence all information obtained in the course of professional services, as within the limits of the setting, such as a public agency. A licensee safeguards client confidences as permitted by rule or law.

(2) A licensee does not use any confidence of a client to the client's disadvantage.

(3) A licensee, including employees and professional associates of the licensee, does not disclose any confidential information that the licensee, employee, or associate may have acquired in rendering services except as provided by rule or law. All other confidential information is disclosed only with the written informed consent of the client.

(4) A licensee is responsible for being aware of the state and federal regulations concerning confidentiality and for informing clients of the limits of confidentiality as a part of informed consent for services in the context of couple, family, or group treatment. A licensee does not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(5) Whenever a licensee provides services to groups of clients such as couples, families or therapy groups, special care must be taken related to issues of confidentiality. In group therapy, confidentiality issues are to be discussed in the beginning of the group. The parameters of confidentiality within marriage and family therapy are to be discussed early in the counseling process and a clear understanding achieved with all involved.

(6) Whenever a licensee's services are requested or paid for by one client for another, the licensee informs both clients of the licensee's responsibility to treat any information gained in the course of rendering the services as confidential information.

(7) A licensee limits access to client records and informs every individual associated with the agency or facility of the licensee, such as a staff member, student, or volunteer, that access to client records must be limited to only the licensee with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, and an individual authorized to have access by the written informed consent of the client. Client records are defined as the records of the counseling or therapeutic relationship, including interview notes, assessments, diagnosis, appraisals, correspondence, or recordings.

(8) A licensee maintains the records of a client after the professional relationship between the licensee and the client has ceased and informs clients as to how long records are retained. The licensee stores and disposes of records in ways that maintain confidentiality. The licensee makes advance provision for the confidential disposition of records in the event the licensee is unable to do so for reasons such as illness or death.

(9) A licensee discloses to the Board and its agents any client records that the Board and its agents consider to be germane to a disciplinary proceeding. The general requirement that licensees keep information confidential does not apply when:

(a) Disclosure is required to prevent clear and imminent danger to the client or others; or

(b) Legal requirements demand that confidential information must be revealed.

(10) A licensee must obtain written informed consent from each client before electronically recording sessions with that client or before permitting third-party observations of their sessions.

(11) A licensee adequately disguises the identity of a client when using material derived from a counseling relationship for purposes of training, research, professional meetings, or publications.

(12) A licensee provides clients reasonable access to records concerning them and should take due care to protect the confidences of others contained in those records, or when information from others about the client could result in harm to that person or persons upon disclosure to the client. Following guidelines set forth in ORS 192.518(2) and 675.765(1), unless otherwise ordered by the court, parents shall have access to the client records of juveniles who are receiving professional services from the licensee.

(13) When a licensee is unclear on professional issues or standards of practice, consultation is to be obtained while protecting any confidentiality issue that may be involved.

(14) Licensees proceed cautiously when asked to provide services to a client currently seeing another professional. Consideration is given to the client's welfare and the situation. Care is given to minimize the risk of confusion and conflict; and when appropriate, the other service provider is consulted. It is not ethical to provide the same therapeutic service that is simul-

taneously being provided by another professional without collaboration regarding the best interests of the client.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.785
Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-060-0060
Conduct and Competence

(1) A licensee accepts the obligation to conform to high standards of conduct in the capacity of a counseling professional. The private conduct of a licensee is a personal matter to the degree that it does not compromise the fulfillment of professional responsibilities. A licensee will respect the traditions of the profession, and refrain from any conduct that would bring discredit to the profession.

(2) Licensees correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the licensee's qualifications, services, or products. A licensee does not advertise in a way that is false, fraudulent, or misleading to the public. Testimonials from current clients are not solicited for advertising or other purposes due to the client's vulnerability to undue influence. A licensee does not engage in any conduct likely to deceive or defraud the public or the Board. A licensee does not participate in, condone, or become associated with dishonesty, fraud, deceit, or misrepresentation. A licensee reports to the Board any civil lawsuit brought against the licensee which relates in any way to the licensee's professional conduct and notifies the Board of any disciplinary action or loss of a mental health professional or state license, certification, or registration.

(3) A licensee files a complaint with the Board when the licensee has reason to believe that another licensee is or has been engaged in conduct which violates law or rules adopted by the Board. This requirement to file a complaint does not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other counselor or therapist. In that case, the client-therapist confidentiality supersedes the licensee's requirement to report the other therapist. However, this does not relieve a licensee from the duty to file any reports required by law concerning abuse of children or vulnerable adults. Licensees do not initiate, participate in, or encourage the filing of ethics complaints that are unwarranted or intended to harm a counselor/therapist rather than to protect clients or the public.

(4) A licensee does not engage in sexual or other harassment or exploitation of clients, students, trainees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in disciplinary proceedings. A licensee must cooperate with the Board, or any committee or representative of the Board, in any investigation it may pursue relating to licensee misconduct or violation of the law or rules of the Board. Failure to cooperate is itself an ethics violation.

(5) A licensee understands the areas of competence of related professions and acts with due regard for the needs, special competencies and obligations of colleagues in other allied professions, and does not disparage the qualifications of any colleague.

(6) A licensee recognizes the importance of a clear understandings on financial matters with clients. Arrangements for fees and payments are made at the beginning of the counseling or therapeutic relationship. When a client presents financial hardship, the licensee will make reasonable effort to direct the client to possible affordable options. Licensees do not withhold records under their control that are requested by the client solely because payment has not been received for services. Licensees who work in an organizational setting do not divert clients to the licensee's own private practice unless it is in the best interests of the client in the opinion of the client and the organization.

(7) A licensee makes certain that the qualifications of persons in a licensee's employ are represented in a manner that is not false or misleading.

(8) A licensee does not perform, nor pretend to be able to perform, professional services beyond the licensee's field or fields of competence based on their education, training, supervision, consultation, study or professional experience. Licensees are responsible for keeping current in areas of competence. When working in emerging areas of the profession, the licensee ensures competence through relevant education, training, supervised experience, consultation, or study.

(9) A licensee does not misrepresent professional qualifications, education, experience, or affiliations.

(10) A licensee does not provide what is, or may be reasonably considered, inappropriate, unnecessary, or inadequate treatment or counseling/therapeutic services. A licensee practices within accepted professional standards based on recognized knowledge through research and theoretical best practices.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.785
Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08

833-060-0070
Assessment, Measurement, Research and Consulting

(1) Licensees who conduct professional services related to counseling do so with regard to high ethical standards.

(2) Licensees conduct proper assessments of clients within their level of competence and base findings on reliable information and techniques sufficient to substantiate their conclusions. Licensees administer, adapt, score, interpret or use assessment techniques, such as tests and measurement instruments, only with valid and reliable tools and with expertise in such assessment methods.

(3) Licensees who conduct research do so with the welfare of participants of primary importance. Ethical research includes informed consent from participants, institutional approval, including measures to protect research participants, and debriefing participants as soon as possible regarding the nature, results and conclusions of the research. The results of research are reported accurately without fabrication or unreported errors.

(4) Licensees who consult or provide services where the client is an organization do so with a high degree of self-awareness of their own values, knowledge, skills, limitations and goals and match these factors with the needs and goals of the organization. It is the licensee's responsibility to ensure agreement on the issues, goals and predicted consequences of consulting interventions.

Stat. Auth.: ORS 675.785
Stats. Implemented: ORS 675.785
Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; Renumbered from 833-060-0001, BLPCT 1-2008(Temp), f 5-28-08, cert. ef. 6-1-08 thru 11-27-08

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Board of Naturopathic Examiners
Chapter 850

Rule Caption: Defines "Direct Supervision."
Adm. Order No.: BNE 4-2008
Filed with Sec. of State: 6-11-2008
Certified to be Effective: 6-11-08
Notice Publication Date: 5-1-2008
Rules Amended: 850-010-0005
Subject: Defines Direct Supervision for Naturopathic Physicians.
Rules Coordinator: Anne Walsh—(971) 673-0193

850-010-0005
Definitions

As used in OAR 850-010-0010 to 850-060-0226 unless otherwise required by context:

(1) "Board" means Oregon State Board of Naturopathic Examiners.

(2) "Diagnosis" is a determination by a licensed naturopathic physician of the nature and etiology of a disease by the use of all recognized and accepted physical and laboratory examinations, which includes the drawing of blood and taking specimens of body fluids and tissues for microscopic and chemical analysis.

(3)"Direct Supervision" means that a licensed Naturopathic physician is physically present in the clinic, is monitoring and directly responsible for activities of supervised person, and is available to intervene if necessary.

(4) "Food" is any organic substance taken into the body which helps maintain life, builds or repairs tissue, and sustains growth. This includes the use of enzymes, minerals, vitamins (either in trace amounts or megodoses) and any food products or extracts however processed, refined, or concentrated.

(5) "Lesion" refers to any pathological or traumatic change to human tissue or impairment of a bodily function.

(6) "Naturopathy" or "Naturopathic Medicine" is defined as a system of diagnosing and treating the human body and maintaining or restoring it

to a state of normal health, as defined in ORS Chapter 685, and in such other sections thereof as may apply.

(7) "Non-Poisonous Plant Substance" is any plant substance, taken in accepted therapeutic dosages, which would not, by its action on organs or tissue, seriously impair function or destroy life.

(8) "Patient" means any person who is examined, treated, or otherwise provided naturopathic medical services, whether or not the person has entered into a physician-patient relationship or has agreed to pay a fee for services.

(9) "Plant Substances" are those substances found in nature which impart therapeutic or medicinal properties and are used as medicines or as ingredients in medicines. They comprise the whole plant, herbs, anatomical parts, saps, extracts, secretions, and other constituents thereof. Their natural state may be altered by any mechanical, physical, or chemical process

(10) "Poisonous Plant Substances" The Board considers any of the following to be poisonous plant substances: Coniine, Delphinine, Muscarine, Oleandrin, and Strychnine.

(11) "Prescription" is a written or verbal order for the prescribing or dispensing of non-poisonous plant substances as taught in approved schools and given in standard medical dosages. Naturopathic physicians shall be allowed to prescribe and dispense non-poisonous plant substances.

(12) "Preventive" as used in ORS 685 and OAR 850, is defined as the branch of medicine concerned with preventing the occurrence of both mental and physical illness and disease. Preventive medicine encompasses preventing the development of disease in a susceptible or potentially susceptible population including general promotion of health and specific protection such as immunization; early diagnosis and prompt therapy to shorten duration of illness, reduce the severity of disease, reduce the possibility of contagion, and limit sequelae;

(13) "Superficial" as used in ORS 685.010(4) Minor Surgery refers to lacerations, abrasions, benign lesions, foreign bodies and wounds which involve the skin, mucosa, and subcutaneous tissue to a depth of the deep superficial fascia, and which do not involve vital deep structure such as major nerves, major tendons, major blood vessels and bone or viscera.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.010
Hist.: NE 3, f. 8-26-66; NE 4, f. 10-9-67; NE 1-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; NE 3-1984(Temp), f. & ef. 12-13-84; NE 2-1992, f. & cert. ef. 7-28-92; BNE 4-2000, f. & cert. ef. 12-6-00; BNE 1-2007, f. & cert. ef. 6-12-07; BNE 4-2008, f. & cert. ef. 6-11-08

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Rule Caption: Clarifies terms that are illegal to use unless licensed in Oregon.
Adm. Order No.: BNE 5-2008
Filed with Sec. of State: 6-11-2008
Certified to be Effective: 6-11-08
Notice Publication Date: 5-1-2008
Rules Amended: 850-050-0120
Subject: Meant to clarify the intent of ORS 685, that certain terms are illegal to use unless licensed in Oregon as a Naturopathic physician.
Rules Coordinator: Anne Walsh—(971) 673-0193

850-050-0120
Illegal Practice; Duty to Report

(1) No person other than a licensee complying with the provisions of ORS Chapter 685 shall:

(a) Advertise, hold out to the public or represent in any manner that the person is authorized to practice naturopathy or naturopathic medicine in Oregon, or

(b) Use the terms "naturopathic practitioner," "naturopathic healer," "naturopathic doctor," "naturopathic consultant" or any other terms that convey intent to practice naturopathy or naturopathic medicine.

(2) Any applicant for examination shall be prohibited from and prosecuted for any practice of naturopathy or naturopathic medicine while awaiting examination.

(3) Any person convicted of practicing illegally in Oregon or any person who, without a license, makes a diagnosis shall not be admitted to examination by the Board at any time.

(4) It shall be the duty of all licensees of the Board, in the interests of both the public and the profession, to inform the Board, in writing, fully signed, of anyone practicing naturopathy or naturopathic medicine in Oregon without a license or otherwise in violations of the law.

(5) For the purpose of this rule, naturopathic treatment shall be considered as practicing naturopathy or naturopathic medicine within the meaning of ORS 685.010(5), unless under the direct supervision of a licensee of the Board.

Stat. Auth.: ORS 685
Stats. Implemented:
Hist.: NE 2, f. 6-7-59; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0120, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 5-2008, f. & cert. ef. 6-11-08

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Rule Caption: Updates the formulary compendium.
Adm. Order No.: BNE 6-2008
Filed with Sec. of State: 6-11-2008
Certified to be Effective: 6-11-08
Notice Publication Date: 5-1-2008
Rules Amended: 850-060-0225, 850-060-0226
Subject: Updates the Formulary Compendium for Naturopathic physicians and Pharmacists:

Add to 850-060-0225 the following that can be prescribed: Praziquantel, Diphenhydramine, Sodium Tetradecyl Sulfate, Glycerin/Glycerol, Cytisine, Varenicline.

Add to 850-060-0226 Classifications: Beta Adrenergic Blocking Agents**, Histamine-2 (H-2) Antagonists**, Histamine-1 (H-1) Antagonists, excluding all 3rd generation antagonists, Sclerosing Agents, Smoking Cessation.
Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0225
Naturopathic Formulary Compendium

The following substances have been recommended for addition to the Formulary Compendium after review by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed.

(1) Abacavir;
(2) Acarbose;
(3) Acetic Acid;
(4) Acetylcysteine;
(5) Acitretin;
(6) Acyclovir;
(7) Adapalene;
(8) Adenosine Monophosphate;
(9) Albuterol Sulfate;
(10) Alendronate;
(11) Allopurinol;
(12) Alprostadil;
(13) Amino Acids;
(14) Amino Aspirins;
(15) Aminoglycosides;
(16) Aminolevulinic Acid;
(17) Aminophylline;
(18) Aminosalicylic Acid;
(19) Ammonium Chloride;
(20) Ammonium lactate lotion 12%;
(21) Amoxicillin;
(22) Amoxicillin & Clavulanate;
(23) Amphotericin B;
(24) Ampicillin;
(25) Ampicillin & Sulbactam;
(26) Anastrozole;
(27) Anthralin;
(28) Atorvastatin;
(29) Atropine;
(30) Atropine Sulfate;
(31) Auranofin;
(32) Azelaic Acid;
(33) Azithromycin;
(34) Bacampicillin;
(35) Bacitracin;
(36) Baclofen;
(37) Becaplermin;
(38) Belladonna;
(39) Benazepril;

(40) Benzodiazepines;
(41) Benzoic Acid;
(42) Benzonatate;
(43) Betaine;
(44) Betamethasone;
(45) Bethanechol Chloride;
(46) Bichloracetic Acid*;
(47) Bimatoprost Solution 0.03%;
(48) Biologicals;
(49) Bisphosphonates;
(50) Bromocriptine;
(51) Budesonide;
(52) Buprenorphine;
(53) Butorphanol;
(54) Cabergoline;
(55) Calcipotriene;
(56) Calcitonin;
(57) Calcitriol;
(58) Carbamide Peroxide;
(59) Carbidopa;
(60) Carbol-Fuchsin;
(61) Captopril;
(62) Cefaclor;
(63) Cefdinir;
(64) Cefibuten;
(65) Cefadroxil;
(66) Cefditoren;
(67) Cefixime;
(68) Cefonicid Sodium;
(69) Cefpodoxime Proxetil;
(70) Cefprozil;
(71) Ceftibuten;
(72) Cefuroxime;
(73) Celecoxib;
(74) Cellulose Sodium Phosphate;
(75) Cenestin;
(76) Cephalexin;
(77) Cephradine;
(78) Chirocaine*;
(79) Chloramphenicol;
(80) Chloroquine;
(81) Citrate Salts;
(82) Clarithromycin;
(83) Clindamycin;
(84) Clioquinol;
(85) Clostridium botulinum toxin (ab);
(86) Cloxacillin;
(87) Codeine;
(88) Colchicine;
(89) Colistimethate;
(90) Collagenase;
(91) Condylox;
(92) Cortisone;
(93) Coumadin;
(94) Cromolyn Sodium;
(95) Cyanocobalamin;
(96) Cycloserine;
(97) Cytisine
(98) Danazol;
(99) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
(100) Demeclocycline Hydrochloride;
(101) Desmopressin;
(102) Desoxyribonuclease;
(103) Dexamethasone;
(104) Dextran;
(105) Dextromethorphan;
(106) Dextrose;
(107) Dextrothyroxine;
(108) Dicloxacillin;
(109) Dihydroergotamine Migranal;
(110) Didanosine;
(111) Dimethyl Sulfone (DMSO);
(112) Digitalis;
(113) Digitoxin;
(114) Digoxin;
(115) Dinoprostone;
(116) Diphenhydramine
(117) Diphylline;
(118) Dirithromycin;
(119) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
(120) DMSA;
(121) Doxercalciferol;
(122) Doxycycline;
(123) Dronabinol;
(124) Dyclonine;
(125) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
(126) Electrolyte Solutions;
(127) Emtricitabine;
(128) Enalapril;
(129) Ephedrine;
(130) Epinephrine*;
(121) Epinephrine (auto-inject);
(132) Ergoloid Mesylates;
(133) Ergonovine Maleate;
(134) Ergotamine;
(135) Erythromycins;
(136) Erythropoietin;
(137) Estradiol;
(138) Estriol;
(139) Estrogen-Progestin Combinations;
(140) Estrogens, Conjugated;
(141) Estrogen, Esterified;
(142) Estrone;
(143) Estropipate;
(144) Eszopiclone;
(145) Ethyl Chloride;
(146) Etidronate;
(147) Ezetimibe;
(148) Famciclovir;
(149) Fentanyl;
(150) Fibrinolysin;
(151) Flavoxate;
(152) Fluconazole;
(153) Fludrocortisone Acetate;
(154) Flunisolide;
(155) Fluorides;
(156) Fluoroquinolones;
(157) Fluoroquinolines;
(158) Fluorouracil;
(159) Fluticasone propionate;
(160) Fluvastatin;
(161) Fosinopril;
(162) Gaba Analogs;
(163) Gabapentin;
(164) Galantamine H. Br.;
(165) Gamma-Hydroxy Butyrate;
(166) Ganciclovir;
(167) Gentamicin;
(168) Gentian Violet;
(169) Glycerin/Glycerol;
(170) Griseofulvin;
(171) Guaifenesin;
(172) Heparin — subcutaneous, sublingual and heparin locks;
(173) Hexachlorophene;
(174) Homatropine Hydrobromide*;
(175) Human Growth Hormone;
(176) Hyaluronic Acid;
(177) Hyaluronidase;
(178) Hydrocodone;
(179) Hydrocortisone;
(180) Hydrogen Peroxide;
(181) Hydromorphone;
(182) Hydroquinone;
(183) Hydroxychloroquine;
(184) Hydroxypolyethoxydodecane*;
(185) Hyoscyamine;
(186) Iloprost Inhalation Solution;

(187) Imiquimod Cream (5%);
(188) Immune Globulins*;
(189) Insulin;
(190) Interferon Alpha b w/Ribaviron;
(191) Iodine;
(192) Iodoquinol;
(193) Iron Preparations;
(194) Isosorbide Dinitrate;
(195) Isotretinoin;
(196) Itraconazole;
(197) Kanamycin Sulfate;
(198) Ketoconazole;
(199) Lactulose;
(200) Lamivudine;
(201) Letrozole;
(202) Leucovorin Calcium;
(203) Levalbuteral;
(204) Levocarnitine;
(205) Levodopa;
(206) Levonorgestrel;
(207) Levorphanol;
(208) Levothyroxine;
(209) Lincomycin;
(210) Lindane;
(211) Liothyronine;
(212) Liotrix;
(213) Lisinopril;
(214) Lisuride;
(215) Lithium;
(216) Lovastatin;
(217) Mebendazole;
(218) Meclizine;
(219) Medroxyprogesterone;
(220) Medrysone;
(221) Mefloquine;
(222) Megestrol Acetate;
(223) Mercury, Ammoniated;
(224) Mesalamine;
(225) Metformin;
(226) Methadone;
(227) Methimazole;
(228) Methoxsalen;
(229) Methscopolamine;
(230) Methylergonovine;
(231) Methylprednisolone;
(232) Methylsulfonylmethane (MSM);
(233) Methyltestosterone;
(234) Methysergide;
(235) Metronidazole;
(236) Miglitol;
(237) Minerals (Oral & Injectable);
(238) Minocycline;
(239) Misoprostol;
(240) Moexipril;
(241) Monobenzone;
(242) Morphine;
(243) Mupirocin;
(244) Nafarelin acetate;
(245) Naloxone;
(246) Naltrexone;
(247)Natamycin;
(248) Nateglinide;
(249) Nicotine;
(250) Nitroglycerin;
(251) Novobiocin;
(252) Nystatin;
(253) Olsalazine;
(254) Omeprazole;
(255) Opium;
(256) Over the Counter (OTC)
(257) Oxacillin;
(258) Oxamniquine;
(259) Oxaprozin;
(260) Oxtriphylline;
(261) Oxycodone;
(262) Oxygen;
(263) Oxymorphone;
(264) Oxytetracycline;
(265) Oxytocin*;
(266) Pancrelipase;
(267) Papain;
(267) Papavarine;
(268) Paramethasone;
(269) Paregoric;
(270) Penciclovir;
(271) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(272) Penicillin;
(273) Pentosan;
(274) Pentoxifylline;
(275) Pergolide;
(276) Perindopril;
(277) Permethrin;
(278) Phenazopyridine;
(279) Phenylalkylamine;
(280) Phenylephrine*;
(281) Physostigmine;
(282) Pilocarpine;
(283) Pimecrolimus Cream 1%;
(284) Piperazine Citrate;
(285) Podophyllum Resin;
(286) Polymyxin B Sulfate;
(287) Polysaccharide-Iron Complex;
(288) Potassium Iodide;
(289) Potassium Supplements;
(290) Pramoxine;
(291) Pravastatin;
(292) Praziquantel;
(293) Prednisolone;
(294) Prednisone;
(295) Pregabalin;
(296) Progesterone;
(297) Progestins;
(298) Propionic Acids;
(299) Propylthiouracil;
(300) Prostaglandins;
(301) Proton Pump inhibitor;
(302) Pseudoephedrine;
(303) Pyrazinamide;
(304) Pyrethrins;
(305) Quinapril;
(306) Quinidine;
(307) Quinilones;
(308) Quinine Sulfate;
(309) Quinines;
(310) Quinolines;
(311) Ramopril;
(312) Rauwolfia Alkaloids;
(313) Rho(D) Immune globulins*;
(314) Rifabutin;
(315) Rifampin;
(316) Risendronate;
(317) Ranolazine;
(318) Salicylamide;
(319) Salicylate Salts;
(320) Salicylic Acid;
(321) Salsalate;
(322) Scopolamine;
(323) Selenium Sulfide;
(324) Sildenafil Citrate;
(325) Silver Nitrate;
(326) Simvastatin;
(327) Sitagliptin;
(328) Sodium Polystyrene Sulfonate;
(329) Sodium Tetradecyl Sulfate
(330) Sodium Thiosulfate;
(331) Spironolactone;
(332) Stavudine;
(333) Spectinomycin;
(334) Sucralfate;

(335) Sulfasalazine;
(336) Sulfonamide/Trimethoprim/Sulfones;
(337) Tacrolimus;
(338) Tazarotene topical gel;
(339) Telithromycin;
(340) Tenofovir;
(341) Testosterone;
(342) Tetracycline;
(343) Theophylline;
(344) Thiabendazole;
(345) Thyroid;
(346) Thyroxine;
(347) Tiagabine;
(348) Tibolone;
(349) Tiludronate;
(350) Tinidazole;
(351) Tobramycin;
(352) Topical steroids;
(353) Tramadol;
(354) Trandolapril;
(355) Trazodone;
(356) Tretinoin;
(357) Triamcinolone;
(358) Triamterene;
(359) Trichloracetic Acid*;
(360) Trimetazidine;
(361) Trioxsalen;
(362) Triptans;
(363) Troleandomycin;
(364) Undecylenic Acid;
(365) Urea;
(366) Urised;
(367) Ursodiol;
(368) Valacyclovir;
(369) Valproic Acid;
(370) Vancomycin;
(371) Varenicline;
(372) Verapamil;
(373) Verdenafil HCL;
(374) Vidarabine;
(375) Vitamins (Oral & Injectable);
(376) Yohimbine;
(377) Zalcitabine;
(378) Zidovudine;
(379) Zolpidem;
(380) Local Anesthetics:
(a) Benzocaine*;
(b) Bupivacaine*;
(c) Chloroprocaine*;
(d) Dyclonine*;
(e) Etidocaine*;
(f) Lidocaine*;
(g) Lidocaine (non-injectable dosage form);
(h) Mepivocaine*;
(i) Prilocaine*;
(j) Procaine*;
(k) Tetracaine*.
(381) Vaccines:
(a) BCG*;
(b) Cholera*;
(c) Diptheria*;
(d) DPT*;
(e) Haemophilus b Conjugate*;
(f) Hepatitis A Virus*;
(g) Hepatitis B*;
(h) Influenza Virus*;
(i) Japanese Encephalitis Virus*;
(j) Measles Virus*;
(k) Mumps Virus*;
(l) Pertussis*;
(m) Plague*;
(n) Pneumococcal*;
(o) Poliovirus Inactivated*;
(p) Poliovirus-Live Oral*;
(q) Rabies*;
(r) Rubella*;
(s) Smallpox*;
(t) Tetanus IG*;
(u) Tetanus Toxoid*;
(v) Typhoid*;
(w) Varicella*;
(x) Yellow Fever*;
(382) SkinTests:
(a) Diptheria*;
(b) Mumps*;
(c) Tuberculin*.

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

850-060-0226
Naturopathic Formulary by Classification

The following classifications for substances listed in 850-060-0225 have been recommended by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed. A double asterisk (**) indicates examples include but are not limited to the substances listed.

(1)(a) Amino Acids;
(b) Levocarnitine**;
(2) Antiestrogens;
(a) Nafarelin Acetate;
(b) Tibolone;
(3) Antigout;
(a) Colchicine;
(b) Allopurinol;
(4)(a) Antihistamine
(b) Diphenhydramine
(5) Anti-infective Agents;
(a) Antihelmintics;
(A) Thiabendazole.
(B) Oxamniquine.
(C) Mebendazole.
(b) Antibacterials;
(A) Aminoglycosides**;
(i) Gentamicin;
(ii) Kanamycin Sulfate;
(iii) Tobramycin;
(B) Cephalosporins**;
(i) Cefaclor;
(ii) Cefadroxil;
(iii) Cefdinir;
(iv) Cefditoren;
(v) Cefibuten;
(vi) Cefixime;
(vii) Cefonicid Sodium;
(viii) Cefpodoxime Proxetil;
(ix) Cefprozil;
(x) Ceftibuten;
(xi) Cefuroxime;
(xii) Cephalexin;
(xiii) Cephradine;
(C) Chloramphenicol;
(D) Macrolides and Ketolides**;
(i) Azithromycin;
(ii) Clarithromycin;
(iii) Dirithromycin;
(iv) Erythromycins;
(v) Telithromycin;
(vi) Troleandomycin;

(E) Penicillins**;
(i) Amoxicillin and Clavulanate;
(ii) Amoxicillin;
(iii) Ampicillin and Sulbactam;
(iv) Ampicillin;
(v) Bacampicillin;
(vi) Cloxacillin;
(vii) Dicloxacillin;
(viii) Oxacillin;
(ix) Penicillin;
(F)(i) Quinolones**;
(ii) Fluoroquinolines;
(G)(i) Sulfonamides;
(ii) Sulfonamide/Trimethoprim/Sulfones;
(H) Tetracyclines**;
(i) Demeclocycline Hydrochloride;
(ii) Doxycycline;
(iii) Minocycline;
(iv) Oxytetracycline;
(v) Tetracycline;
(I) Misc. antibacterials;
(i) Bacitracin;
(ii) Clindamycin;
(iii) Colistimethate;
(iv) Lincomycin;
(v) Novobiocin;
(vi) Polymyxin B Sulfate;
(vii) Spectinomycin;
(viii) Vancomycin;
(c) Antifungals;
(A) Azoles**;
(i) Fluconazole;
(ii) Itraconazole;
(iii) Ketoconazole;
(iv) Tinidazole;
(B) Amphotericin B;
(C) Gentian Violet;
(D) Griseofulvin;
(E) Nystatin;
(d) Antimycobacterials;
(A) Aminosalicylic Acid;
(B) Cycloserine;
(C) Pyrazinamide;
(D) Rifabutin;
(E) Rifampin;
(e) Antivirals;
(A) Interferon**;
(B) Nucleoside/nucleotide analogs**;
(i) Abacavir;
(ii) Acyclovir;
(iii) Didanosine;
(iv) Emtricitabine;
(v) Famciclovir;
(vi) Ganciclovir;
(vii) Lamivudine;
(viii) Penciclovir;
(ix) Stavudine;
(x) Tenofovir;
(xi) Valacyclovir;
(xii) Viarabine;
(xiii) Zalcitabine;
(xiv) Zidovudine;
(f) Antiprotozoal;
(A) Iodoquinol;
(B) Metronidazole;
(C) Quinines;
(i) Chloroquine;
(ii) Hydroxychloroquine;
(iii) Mefloquine;
(iv) Quinine Sulfate;
(g) Misc.;
(A) Immune Globulins* **;
(B) Lindane;
(C) Permethrin;
(D) Pyrethrins;
(6) Antineoplastic Agents;
(a) Anastrozole;
(b) Letrozole;
(7)(a) Anti-thyroid;
(b) Thionamides;
(A) Methimazole;
(B) Propylthiouracil;
(8) Autonomic Drugs;
(a) Parasympathomimetic;
(A) Bethanechol;
(B) Galantamine H. Br;
(b) Anticholinergic;
(A) Atropine Sulfate;
(B) Atropine;
(C) Belladonna;
(D) Flavoxate;
(E) Homatropine Hydrobromide*;
(F) Hyoscyamine;
(G) Meclizine;
(H) Methscopolamine;
(I) Physostigmine;
(J) Pilocarpine;
(K) Scopolamine;
(c) Sympathomimetic;
(A) Ephedrine;
(B) Epinephrine*;
(C) Epinephrine (auto-inject);
(D) Psuedoephedrine;
(d)(A) Sympatholytic;
(B) Yohimbine;
(e) Skeletal Muscle Relaxants;
(A) Clostridium botulinum toxin (ab);
(B) Baclofen;
(f)(A) Misc.;
(B) Nicotine;
(9) Beta Adrenergic Blocking Agents**
(10) Biologicals;
(a)(A) Cytokine;
(B) Monoclonal antibodies;
(b) Enzymes**;
(A) Collagenase;
(B) Desoxyribonuclease;
(C) Fibrinolysin;
(D) Hyaluronidase;
(E) Pancrelipase;
(F) Papain;
(c) Hormones — see hormone;
(d) Immune gobulins — see anti-infective, misc;
(e) Interferons — see antivirals;
(f) Prostaglandins**;
(A) Alprostadil;
(B) Bimatoprost;
(C) Iloprost;
(D) Dinoprostone;
(E) Misoprostal;
(g) Blood derivatives;
(11) Blood Formation and Coagulation;
(a) Coumadin;
(b) Erythropoietin;
(c) Heparin; subcutaneous, sublingual and heparin locks;
(12) Cardiovascular Drugs;
(a) Cardiac;
(A) Adenosine Monophosphate;
(B) Digitalis;
(C) Digitoxin;
(D) Digoxin;
(E) Quinidine;
(b) Antilipemic;
(A) HMG CoA Reductase Inhibitors**;
(i) Atorvastatin;
(ii) Fluvastatin;
(iii) Lovastatin;
(iv) Pravastatin;
(v) Simvastatin;
(B) Ezetimibe;

(c) Diuretics;
(A) Spironolactone;
(B) Triamterene;
(d) Hypotensive;
(A) Lisuride;
(B) Rauwolfia Alkaloids;
(e) Vasodilating;
(A) Nitrates**;
(i) Isosorbide Dinitrate;
(ii) Mononitrate;
(iii) Nitroglycerin;
(B) Papavarine;
(f)(A) Calcium Channel blockers;
(B)(i) Phenylalkyamine**;
(ii) Verapamil;
(g) ACE inhibitors**;
(A) Benazepril;
(B) Captopril;
(C) Enalapril;
(D) Fosinopril;
(E) Lisinopril;
(F) Moexipril;
(G) Perindopril;
(H) Quinapril;
(I) Ramopril;
(J) Trandolapril;
(13) Central Nervous System Agents;
(a) Analgesics and Antipyretics;
(A) NSAIDS;
(i) Amino Aspirins;
(ii) Celecoxib;
(iii) Mesalamine;
(iv) Olsalazine;
(v) Oxaprozin;
(vi) Proprionic Acid Derivatives**;
(I) Fenoprofen;
(II) Flurbiprofen;
(III) Ibuprofen;
(IV) Ketoprofen;
(V) Oxaprozin;
(VI) Naproxen;
(vii) Salicyclic Acid;
(viii) Salicylamide;
(ix) Salicylate Salts;
(x) Salsalate;
(xi) Sulfasalazine;
(B) Opioids**;
(i) Buprenorphine;
(ii) Butorphanol;
(iii) Codeine;
(iv) Dextromethorphan;
(v) Fentanyl;
(vi) Hydrocodone;
(vii) Hydromorphone;
(viii) Levorphanol;
(ix) Methadone;
(x) Morphine;
(xi) Opium;
(xii) Oxycodone;
(xiii) Oxymorphone;
(xiv) Paregoric;
(xv) Tramadol;
(b) Opioid Antagonists;
(A) Naloxone;
(B) Naltrexone;
(c) Anticonvulsants;
(A) Gaba Analogues**;
(i) Gabapenten;
(ii) Pregabalin;
(iii) Tigabine;
(B) Valproic Acid;
(d) Anti-Parkinson's;
(A) Bromocriptine;
(B) Carbidopa;
(C) Cabergoline;
(D) Levodopa;
(E) Pergolide;
(e) Psychotherapeutic;
(A) Anxiolytics, sedatives and hypnotics;
(i) Benzodiazepines**;
(ii) Piperazine;
(I) Eszopiclone;
(II) Ranolazine;
(III) Sildenafil Citrate;
(IV) Trimetazidine;
(V) Verdenafil HCL;
(iii) Zolpidem;
(B)(i) Anti-Manic;
(ii) Lithium;
(f) Misc.;
(A) Gamma-Hydroxy Butyrate;
(B) Triptans**;
(14) Diabetic;
(a) Acarbose;
(b) Insulin;
(c) Metformin;
(d) Miglitol;
(e) Nateglinide;
(15) Electrolytic;
(a) Ammonium Chloride;
(b) Bisphosphonates**;
(A) Alendronate;
(B) Etidronate;
(C) Risendronate;
(D) Tiludronate;
(c) Cellulose Sodium Phosphate (calcium removing);
(d) Dextran;
(e) Dextrose;
(f) Electrolyte Solutions;
(g) Fluorides;
(h) Iodine;
(i) Iron Preparations;
(j) Minerals (Oral & Injectable);
(k) Polysaccharide-Iron Complex;
(l) Potassium Iodide;
(m) Potassium Supplements;
(n) Sodium Polystyrene Sulfonate;
(16) Ergot Derivatives**;
(a) Dihydroergotamine;
(b) Ergoloid Mesylates;
(c) Ergonovine Maleate;
(d) Ergotamine;
(17) EENT preparations;
(a) Acetic Acid;
(b) Ophthalmic Solution (0.03%);
(c) Carbamide Peroxide;
(d) Natamycin;
(e) Phenylephrine;
(f) Prostaglandins — see Biologicals;
(18) GI drugs;
(a) Antidiarrhea — see opioids;
(b)(A) Cathartics and laxatives;
(B) Lactulose;
(c)(A) Antiemetics;
(B) Dronabinol;
(d) Antiulcer and acid suppressants;
(A) Misoprostol;
(B)(i) Proton Pump Inhibitors**;
(ii) Omeprazole;
(C) Sucralfate;
(e) Misc.;
(A) Citrate Salts;
(B) Ursodiol;
(19)(a) Gold Compounds;
(b) Auranofin;
(20) Heavy Metal antagonists (see 850-060-225 for specific education requirements);
(a) Deferoxamine/Desferroxamine;
(b) DMPS;
(c) DMSA;

(d) EDTA;
(e) Penicillamine;
(f) Sodium Thiosulfate;
(21) Histamine-1 Antagonists, excluding all 3rd generation antagonists;
(22) Histamine-2 Antagonists**;
(23) Hormones and synthetic substitutes**;
(a) Adrenals;
(A) Betamethasone;
(B) Budesonide;
(C) Cortisone;
(D) Dexamethasone;
(E) Fludrocortisone Acetate;
(F) Flunisolide;
(G) Fluticasone Propionate;
(H) Hydrocortisone;
(I) Paramethasone;
(J) Prednisolone;
(K) Prednisone;
(L) Tibolone;
(M) Triamcinolone;
(b) Androgens;
(A) Danazol;
(B) Methyltestosterone;
(C) Testosterone;
(c) Contraceptives;
(A) Estrogen-Progestin Combinations;
(B) Progestins;
(d) Estrogens and antiestrogens;
(A) Cenestin;
(B) Estradiol;
(C) Estriol;
(D) Estrogen, Esterified;
(E) Estrogens, Conjugated;
(F) Estrone;
(G) Estropipate;
(e) Pituitary;
(A) Desmopressin;
(B) Human Growth Hormone;
(C) Oxytocin;
(f) Progestins;
(A) Medroxyprogesterone;
(B) Medrysone;
(C) Megestrol Acetate;
(D) Methylprednisolone;
(E) Progesterone;
(F) Progestins;
(g) Thyroid;
(A) Dextrothyroxine;
(B) Levonorgestrel;
(C) Levothyroxine;
(D) Liothyronine;
(E) Liotrix;
(F) Thyroxine;
(24) Immunological;
(a) Tacrolimus;
(b) Rho(D) Immune globulins*;
(25) Local anesthetics**;
(a) Benzocaine*;
(b) Betaine;
(c) Bupivacaine*;
(d) Chirocaine*;
(e) Chloroprocaine*;
(f) Dyclonine*;
(g) Ethyl Chloride;
(h) Etidocaine*;
(i) Hydroxypolyetho-xydodecane*;
(j) Lidocaine (non-injectable dosage form);
(k) Lidocaine*;
(l) Mepivocaine*;
(m) Pramoxine;
(n) Prilocaine*;
(o) Procaine*;
(p) Tetracaine*;
(26) Prostaglandins — see Biologicals;
(27)(a) Quinoline;
(b) Praziquantel;
(28)(a) Sclerosing Agents;
(b) Sodium Tetradecyl Sulfate;
(29) Skin and mucous membrane agents;
(a) Anti-infectives;
(A) Benzoic Acid;.
(B) Carbol-Fuchsin;
(C) Clioquinol;
(D) Hexachlorophene;
(E) Iodoquinol;
(F) Mercury, Ammoniated;
(G) Mupirocin;
(H) Selenium Sulfide;
(I) Silver Nitrate;
(J) Undecylenic Acid;
(b)(A) Anti-inflammatory;
(B) Topical steroids;
(c) Antipruritics and local anesthetics;
(A) Pentosan;
(B) Phenazopyridine;
(d) Cell stimulants and proliferants;
(A) Anthralin;
(B) Tretinoin;
(e) Keratolytic;
(A) Adapalene;
(B) Aminolevulinic Acid;
(C) Bichloracetic Acid;
(D) Imiquimod Cream (5%);
(E) Isotretinoin;
(F) Podophyllum Resin;
(G) Trichloracetic Acid*;
(H) Urea;
(f) Misc.;
(A) Acitretin;
(B) Ammonium lactate lotion 12%;
(C) Azelaic Acid;
(D) Becaplermin;
(E) Calcipotriene;
(F) Condylox;
(G) Fluorouracil;
(H) Hydroquinone;
(I) Methoxsalen;
(J) Monobenzone;
(K) Pimecrolimus Cream 1%;
(L) Tazarotene topical gel;
(M) Trioxsalen;
(30) Skin Tests**;
(a) Diphtheria*;
(b) Mumps*;.
(c) Tuberculin*;
(31) Smoking Cessation;
(a) Cytisine
(b) Varenicline
(32) Upper Respiratory;
(a) Acetylcysteine;
(b) Albuterol Sulfate;
(c) Benzonatate;
(d) Cromolyn Sodium;
(e) Guaifenesin;
(f) Levalbuteral;
(g) Nedocromil;.
(h) Xanthines**;
(A) Aminophylline;
(B) Diphylline;
(C) Oxtriphylline;
(D) Pentoxifylline;
(E) Theophylline;
(33) Vaccines**;
(a) BCG*;
(b) Cholera*;
(c) Diphtheria*;
(d) DPT*;
(e) Haemophilus b Conjugate*;
(f) Hepatitus A Virus*;

(g) Hepatitus B*;
(h) Influenza Virus*;
(i) Japanese Encephalitis Virus*;
(j) Measles Virus*;
(k) Mumps Virus*;
(l) Pertussis*;
(m) Plague*;
(n) Pneumococcal*;
(o) Poliovirus — Inactivated*;
(p) Poliovirus — Live Oral*;
(q) Rabies*;
(r) Rubella*;
(s) Smallpox*;
(t) Tetanus IG*;.
(u) Tetanus Toxoid*;
(v) Typhoid*;
(w) Varicella*;
(x) Yellow Fever*;
(34) Vitamins**;
(a) Calcitonin;
(b) Calcitriol;
(c) Cyanocobalamin;
(d) Doxercalciferol;
(e) Leucovorin Calcium;
(f) Vitamins (Oral & Injectable);
(35) Misc.;
(a) Colchicine (gout);
(b) Dimethyl Sulfone (DMSO);
(c) Glycerin/Glycerol;
(d) Hyaluronic Acid;
(e) Hydrogen Peroxide;
(f) MSM;
(g) OTC Substances;
(h) Oxygen;
(i) Sitagliptin;
(j) Trazodone;
(k) Urised.

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

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Implementing statutory changes to references to persons with disabilities.
Adm. Order No.: BLI 14-2008
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 6-6-08
Notice Publication Date: 10-1-2007
Rules Amended: 839-006-0200, 839-006-0244, 839-006-0255, 839-006-0270, 839-006-0275, 839-006-0290, 839-006-0300, 839-006-0330, 839-006-0335
Subject: The final rule amendments will implement statutory changes of the term "disabled person" to "person with a disability" and other similar changes.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-006-0200
Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee persons with disabilities the fullest possible participation in the social and economic life of the state, including employment. The people of Oregon have the right to employment without discrimination due to disability.

(2) It is an unlawful employment practice for any employer to refuse to hire or promote, to bar or discharge from employment or to discriminate in compensation, terms, conditions or privileges of employment because an otherwise qualified person has a disability.

(3) Prohibited discrimination includes, but is not limited to:

(a) Limiting, segregating or classifying applicants or employees with disabilities in a way that adversely affects opportunities or status;

(b) Participating in a contractual or other arrangement with the effect of discriminating against applicants or employees with disabilities, including but not limited to, relationships with employment or referral agencies, labor unions, organizations providing fringe benefits, or training and apprenticeship programs;

(c) Utilizing standards, criteria or methods of administration that have the effect of discrimination against applicants or employees with disabilities;

(d) Excluding or denying equal employment or benefits to an otherwise qualified person because the person is known to have an association with a person with a disability;

(e) Failing to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the business of the employer;

(f) Using qualification standards, tests or other criteria that screen out or tend to screen out a person with a disability or a class of persons with disabilities unless the standard, test or other selection criterion, as used by the employer, is job related for the position in question and is consistent with business necessity;

(g) Failing to select and administer tests in a way that accurately reflects the skills and aptitude of applicants or employees with disabilities that impair sensory, manual or speaking skills. An employer may, however, administer tests measuring sensory, manual and speaking skills of applicants and employees.

(4) It is an unlawful employment practice for an employment agency to:

(a) Fail or refuse to refer for employment, or otherwise discriminate against an individual because that individual has a disability; or

(b) Classify or refer an individual for employment because that individual has a disability.

(5) It is an unlawful employment practice for a labor organization to exclude or to expel from its membership, or to discriminate in any way against an individual because that individual has a disability.

(6) It is an unlawful employment practice for any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by ORS 659A.142 and 659A.112 to 659A.139.

(7) It is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce an individual to do any of the acts forbidden by ORS 659A.142 and 659A.112 to 659A.139 or to attempt to do so.

(8) The Civil Rights Division of the Bureau of Labor and Industries has the responsibility to protect the rights of employees and applicants with disabilities through the enforcement of ORS 659A.142 and 659A.112 to 659A.139. OAR 839-006-0200 to 839-006-0265 interpret these statutes and apply to all complaints and inquiries relating to these statutes received on or after the effective date of these rules.

(9) A person claiming a violation of ORS 659A.142 and 659A.112 to 659A.139 may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142 & 659A.112 - 659A.139
Hist.: BL 2-1984, f. & ef. 1-31-84 ; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0244
Direct Threat

(1) Notwithstanding other provisions of these rules, an employer may refuse to employ a person with a disability posing a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or reduced below the level of significant risk of substantial harm by reasonable accommodation.

(2) The determination that a person with a disability poses a "direct threat" is based on an individualized assessment of the person's present ability to safely perform the essential functions of the position. The assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge or on the best available objective evidence. In making the determination, factors to be considered include:

(a) The duration of risk;
(b) The nature and severity of potential harm;
(c) The likelihood that potential harm will occur; and
(d) The imminence of potential harm.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.142 & 659A.112 - 659A.139

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98, Renumbered from 839-006-0230; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0255
Effect of Law

Where a state or federal law or regulation prevents employment in a particular position of a person with a specified, medically verifiable impairment or specified severity of impairment, an employer is not required to employ a person with a disability with such an impairment in that position. Nothing in this rule will be construed to permit denial of employment to such person in a position that is not subject to such law or regulations.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.142 & 659A.112 - 659A.139
Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0270
Purpose and Scope

(1) ORS 659A.103 provides that it is the policy of the State of Oregon to guarantee persons with disabilities the fullest possible participation in the social and economic life of the state, including participating in and receiving the benefits of the services, programs and activities of state government.

(2) ORS 659A.142(4) provides that it is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual has a disability.

(3) State government shall make reasonable modifications in services, programs or activities, including but not limited to policies and procedures, when the modifications are necessary for state government to comply with ORS 659A.142(4) unless state government can demonstrate that making the modifications would result in a fundamental alteration in the nature of the service, program, or activity or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.

(4) ORS 659A.142(4) and these rules are not intended to:

(a) Create an independent entitlement to any service, program or activity of state government; or

(b) Require state government to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial or administrative burdens, as determined on a case-by-case basis.

(5) In determining whether financial and administrative burdens are undue for purposes of ORS 659A.142(4) and these rules, all resources available for use in the funding and operation of the service, program, or activity will be considered.

(6) Nothing in ORS 659A.142(4) or these rules prohibits state government from providing benefits, services, or advantages to individuals with disabilities beyond those required by 659A.142(4) or these rules.

(7) A person claiming a violation of ORS 659A.142(4) may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0275
Definitions — Disability

(1) For purposes of ORS 659A.142(4) and these rules, "person with a disability" means an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(3) "Substantially limits" means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(4) "Major life activity" includes, but is not limited to, self care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property. Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(5) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. "Has been misclassified as having" means the individual has been or is the subject of an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(6) "Is regarded" as having impairment means that the individual:

(a) Has a physical or mental impairment that does not substantially limit major life activities but is treated by state government as having such an impairment;

(b) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(c) Has none of the impairments described in subparagraphs (a) or (b) of this paragraph, but is treated by state government as having a mental or physical impairment that substantially limits a major life activity.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0290
Other Statutes, Regulations and Agencies Governing Access by or Discrimination Against Persons with Disabilities

(1) Public transportation services, programs, and activities of public entities are subject to Title II of the federal Americans with Disabilities Act and regulated by the U.S. Department of Transportation. See 42 USC 12141 §221 and 49 CFR §37.

(2) Accessibility of government facilities is subject to Title II of the Americans with Disabilities Act, 42 USC §12131. The U.S. Department of Justice regulates existing government facilities (28 CFR §35.150) and new construction and alterations to government facilities (28 CFR §35.151). The Oregon Department of Consumer and Business Services has jurisdiction over disability access to state and local government facilities in Oregon. See ORS 447.210 to 447.280 and administrative rules and standards adopted pursuant thereto.

(3) The federal Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any federal executive agency or by the United States Postal Service. 29 USC §794.

(4) Discrimination against persons with disabilities in employment is subject to ORS 659A.100 to 139, 659A.142 and OAR 839-006-0200 to 0265.

(5) Discrimination against persons with disabilities with respect to goods and services offered in a commercial manner by places of public accommodation is subject to ORS 659A.142 and OAR 839-006-0300 to 0335.

(6) Discrimination against persons with disabilities in real property transactions is subject to ORS 659A.142, 659A.145 and OAR 839-006-0400 to 0425.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103 & 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0300
Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee persons with disabilities equal access to and enjoyment of places of public accommodation as defined in ORS 659A.142 and 659A.400. No place of public accommodation may discriminate against a person by any distinction or restriction because that person has a disability.

(2) Discrimination on the basis of disability by places of public accommodation is an unlawful practice and the Civil Rights Division of the Bureau of Labor and Industries has the responsibility to protect the rights of persons with disabilities through the enforcement of ORS 659A.142 and 659A.121. OAR 839-006-0300 to 839-006-0335 interpret these statutes and apply to all complaints and inquiries relating to these statutes received on or after the effective date of these rules.

(3) A person claiming a violation of ORS 659A.142 and 659A.121, pertaining to discrimination of persons with disabilities by places of public accommodation, may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103, 659A.142, 659A.121 & 659A.400
Hist.: BL 10-1996, f. & cert. ef. 12-4-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0330
Removal of Barriers to Goods and Services

(1) Places of public accommodation must remove physical and administrative barriers, if readily achievable (as defined in OAR 839-006-0310) in order to make offered goods and services accessible.

(2) If barrier removal is not readily achievable, places of public accommodation must take alternative steps to make offered goods and services accessible, such as providing goods and services at the door, sidewalk or curb; providing home delivery; retrieving merchandise from inaccessible shelves or racks; relocating activities to accessible locations; or relaxing administrative policies.

(3) Places of public accommodation may not impose charges on persons with disabilities to recover costs of barrier removal.

(4) Removal of physical or administrative barriers that would result in significant difficulty or expense or in a fundamental alteration in the nature of the offered goods or services is not required and is to be determined on a case-by-case basis.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 & 659A.142
Hist.: BL 10-1996, f. & cert. ef. 12-4-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

839-006-0335
Direct Threat

(1) Notwithstanding other provisions of these rules, places of public accommodation may refuse to permit a person with a disability to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation if the person with a disability poses a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or reduced below the level of significant risk of substantial harm by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

(2) In determining whether a person with a disability poses a direct threat to the health or safety of others, places of public accommodation must make an individualized assessment, based on reasonable judgment that relies on the most current medical knowledge, or on the best available objective evidence, to ascertain:

(a) The duration of risk;

(b) The nature and severity of potential harm;

(c) The likelihood that potential harm will occur;

(d) The imminence of potential harm; and

(e) Whether reasonable modifications of policies, practices or procedures will mitigate the risk.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 & 659A.142
Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08

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Rule Caption: Amends the prevailing wage rates for the period beginning January 1, 2008.
Adm. Order No.: BLI 15-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-5-08
Notice Publication Date:
Rules Amended: 839-025-0750
Subject: The rule adopts prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for specified residential projects for the dates specified.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0750
Residential Prevailing Wage Rate Determinations

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determinations are the prevailing rates of wage for workers upon said public works projects for the periods of time specified:

(a) *Special Prevailing Wage Rate Determination for Residential Project*, *Lava Court Project*, *Project #2007-01*, dated October 30, 2007, for the period of November 2, 2007 through June 30, 2008.

(b) *Special Prevailing Wage Rate Determination-Second Rate Extension for Residential Project*, *New Winds Project*, *Project #2006-02*, Rate Extension dated August 15, 2006, for the period of April 23, 2008 through June 30, 2008.

(c) *Special Prevailing Wage Rate Determination for Residential Project*, *West Pine Terrace Roof Replacement*, *Project #2008-01*, dated May 21, 2008, for the period of June 5, 2008 through June 30, 2009.

(2) Copies of the rates referenced in section (1) of this rule 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 listed in the blue pages of the phone book. Copies may also 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
Stats. Implemented: ORS 279C.815
Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02 cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04; BLI 4-2004, f. & cert. ef. 5-24-04; BLI 5-2004, f. 6-23-04, cert. ef. 6-24-04; BLI 7-2004, f. 7-14-04, cert. ef. 7-15-04; BLI 13-2004, f. & cert. ef. 10-19-04; BLI 14-2004, f. 10-29-04 cert. ef. 11-1-04; BLI 16-2004, f. 11-8-04, cert. ef. 11-10-04; Renumbered from 839-016-0750, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 9-2005, f. 4-15-05, cert. ef. 4-18-05; BLI 10-2005, f. & cert. ef. 5-2-05; BLI 11-2005, f. 5-31-05, cert. ef. 6-1-05; BLI 12-2005, f. & cert. ef. 6-21-05; BLI 13-2005, f. 6-30-05, cert. ef. 7-1-05; BLI 14-2005, f. & cert. ef. 7-22-05; BLI 15-2005, f. 8-9-05, cert. ef. 8-10-05; BLI 17-2005, f. 8-26-05, cert. ef. 8-29-05; BLI 23-2005, f. 10-26-05, cert. ef. 10-28-05; BLI 25-2005, f. 12-22-05, cert. ef. 12-23-05; BLI 6-2006, f. 3-9-06, cert. ef. 3-13-06; BLI 22-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 27-2006, f. 7-17-06, cert. ef. 7-18-06; BLI 30-2006, f. 8-16-06, cert. ef. 8-18-06; BLI 31-2006, f. 9-8-06, cert. ef. 9-11-06; BLI 44-2006, f. 12-18-06, cert. ef. 1-1-07; BLI 17-2007, f. & cert. ef. 7-2-07; BLI 30-2007, f. 11-1-07, cert. ef. 11-2-07; BLI 10-2008, f. 4-22-08, cert. ef. 4-23-08; BLI 15-2008, f. 6-4-08, cert. ef. 6-5-08

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Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.
Adm. Order No.: BLI 16-2008
Filed with Sec. of State: 6-11-2008
Certified to be Effective: 6-11-08
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).

(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, 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

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Construction Contractors Board
Chapter 812

Rule Caption: Chapter 812 cite reference amendments to match 2007 statutes.

Adm. Order No.: CCB 9-2008
Filed with Sec. of State: 6-11-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 812-001-0100, 812-001-0140, 812-001-0500, 812-002-0011, 812-002-0040, 812-002-0140, 812-002-0143, 812-002-0160, 812-002-0180, 812-002-0190, 812-002-0200, 812-002-0260, 812-002-0280, 812-002-0345, 812-002-0420, 812-002-0440, 812-002-0443, 812-002-0460, 812-002-0530, 812-002-0533, 812-002-0537, 812-002-0630, 812-002-0635, 812-002-0640, 812-002-0670, 812-002-0673, 812-002-0675, 812-002-0760, 812-002-0780, 812-003-0110, 812-003-0120, 812-003-0160, 812-003-0180, 812-003-0190, 812-003-0210, 812-003-0240, 812-003-0250, 812-003-0310, 812-003-0320, 812-003-0330, 812-003-0350, 812-003-0370, 812-003-0380, 812-003-0390, 812-003-0400, 812-003-0410, 812-003-0430, 812-004-0110, 812-004-0120, 812-004-0210, 812-004-0240, 812-004-0250, 812-004-0300, 812-004-0340, 812-004-0400, 812-004-0440, 812-004-0470, 812-004-0520, 812-004-0535, 812-004-0540, 812-004-0550, 812-004-0560, 812-004-0590, 812-005-0100, 812-005-0140, 812-005-0160, 812-005-0170, 812-005-0200, 812-005-0210, 812-005-0250, 812-006-0100, 812-006-0150, 812-006-0200, 812-006-0250, 812-006-0300, 812-006-0350, 812-006-0400, 812-009-0020, 812-009-0050, 812-009-0070, 812-009-0090, 812-009-0140, 812-009-0160, 812-009-0200, 812-009-0220, 812-009-0320, 812-009-0340, 812-009-0430, 812-010-0020, 812-010-0060, 812-010-0080, 812-010-0090, 812-010-0100, 812-010-0120, 812-010-0160, 812-010-0400, 812-010-0420, 812-010-0425, 812-010-0470, 812-012-0110
Subject: The rules are amended to correct cite references due to the renumbering of ORS chapters 183, 192 and 701 by the 2007 legislation.
Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0100
Notice of Proposed Rule

Except as provided in OAR 812-001-0110, before adopting, amending, or repealing any permanent rule, the Construction Contractors Board shall give notice of the intended action:

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

(2) By mailing or emailing a copy of the notice to persons on the Construction Contractors Board's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of rule.

(3) By mailing or emailing a copy of the notice at least 28 days before the effective date of the rule to the:

(a) Associated Press;

(b) Oregon Labor Press;

(c) Capitol Press Room, State Capitol;

(d) Oregon Consumer League; and

(e) Oregon Department of Health.

(4) By mailing or emailing a copy of the notice to legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.335, 183.341, 670.310 & 701.235

Hist.: 1BB 4, f. & ef. 12-29-75; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; Renumbered from 812-001-0000, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-001-0140
Response Time to Notices

(1) Time for response to a notice delivered pursuant to ORS 701.117 shall run from the date of mailing.

(2) OAR 137-003-0520(10) shall apply to the computation of time to respond to a notice under this rule, whether the notice is related to a contested case, arbitration or any other matter.

Stat. Auth.: ORS 183.415, 670.310 & 701.235

Stats. Implemented: ORS 183.415 & 701.117

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1991, f. & cert. ef. 2-4-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-2002, f. 5-

28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04; Renumbered from 812-001-0010, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-001-0500
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 192.710. 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 ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, 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; or

(f) Mediation by an authorized representative acting on behalf of the Construction Contractors Board in which the parties to the mediation are parties to a complaint or arbitration filed under ORS 701.131 to 701.145, unless the mediator and the parties elect by written agreement consistent with the form set out in section (8) of this rule to participate in a confidential 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." [Form not included. See ED. NOTE.]

(9) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under section (9) of this rule 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 mediation 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 that the agency administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 17.095 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Auth.: ORS 36.224, 670.310 & 701.235

States. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; Renumbered from 812-001-0040, 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0011
Administrative Law Judge

"Administrative law judge" means a person authorized to conduct hearings for the Office of Administrative Hearings.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.146

Hist.: CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0040
Appurtenance

"Appurtenance" means any accessory improvement to real estate associated with a structure.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 656.027, 701.005, 701.139, 701.145, 701.146 & 701.325

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0140
Complaint

"Complaint," as used in ORS chapter 812, means a complaint filed and processed under ORS 701.131–701.180. Complaints are classified by type as follows:

(1) "Construction lien complaint" is a complaint filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien.

(2) "Employee complaint" is a complaint for unpaid wages or benefits filed by an employee of a licensee or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a licensee for work done by the employee relating to the licensee's operation as a contractor under ORS Chapter 701.

(3) "Employee trust complaint" is a complaint for unpaid payments for employee benefits filed by a trustee with authority to manage and control a fund that receives the employee benefit payments.

(4) "Material complaint" is a complaint filed by a supplier who has not been paid for materials sold to a licensee to be used and installed in a specific structure located within the boundaries of the State of Oregon, or for the rental of equipment to a licensee to be used in the performance of the work of a contractor in connection with such a structure.

(5) "Owner complaint" is a complaint filed by an owner for breach of contract, or for negligent or improper work subject to ORS Chapter 701, or a construction lien complaint.

(6) "Primary contractor complaint" is a complaint by a primary contractor against a licensed subcontractor.

(7) "Subcontractor complaint" is a complaint filed by a subcontractor arising out of a contract between the subcontractor and a primary contractor for unpaid labor or materials furnished under the contract.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.058, 87.093 & 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0143
Complainant

"Complainant" means a person who files a complaint against a contractor under ORS 701.131 to 701.180.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139 - 701.180

Hist.: 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0160
Construction Management

"Construction management" is the coordinating of a construction project, including, but not limited to, selecting contractors to perform work on the project, obtaining permits, scheduling specialty contractors' work, and purchasing materials. "Construction management" does not include consulting work performed by a registered engineer or a licensed architect when operating as provided by ORS 701.010(7).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, 701.026 & 701.238

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0180
Contractor Became Aware of the Requirement

"Contractor became aware of the requirement" (to license) as used in ORS 701.131 includes but is not limited to the date a letter or a proposed order is mailed to the address of record from the agency indicating that the contractor was performing the work of a contractor and must be licensed with the Construction Contractors Board.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0190
Court, Arbitrator or Other Entity

"Court, arbitrator or other entity" means a court of competent jurisdiction or an arbitrator or other entity authorized by law or the parties to a dispute to effect a resolution to the dispute.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 813.460 & 701.131 - 701.180

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0200
Date the Contractor Becomes Aware of a Lapse in License

"Date the contractor becomes aware of a lapse in license" includes but is not limited to the date a notice is mailed to the address of record from the Construction Contractors Board that his/her license has been suspended, terminated or lapsed for any reason.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063 & 701.131

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0260
Dishonest or Fraudulent Conduct

"Dishonest or fraudulent conduct", as used in ORS 701.098(1)(k) and (4)(a)(D) includes, but is not limited to, the following:

(1) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or licensee, has resulted in injury or damage to another person; or

(2) Failing to pay monies when due for materials or services rendered in connection with the applicant's or licensee's operations as a contractor when the applicant or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or

(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide services required by the contract or agreement in a diligent manner and failing to return payment for unperformed work, upon reasonable and proper demand, within ten days of demand; or

(4) Displaying to the public false, misleading, or deceptive advertising whereby a reasonable person could be misled or injured; or

(5) Submitting a license application that includes false or misleading information; or

(6) Submitting a false gross business volume certification in order to qualify for a reduced bond amount as set forth in OAR 812-003-0280; or

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

(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279C.800 to 279C.870; or

(9) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance.

(10) Failing to pay wages as determined by the Bureau of Labor & Industries, Wage and Hour Division.

(11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state, or federal government.

(12) Presenting for payment to the Board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.098
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; CCB 14-2000, f. & cert. ef. 12-4-00; 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 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0280
For Compensation or With the Intent to Sell

"For compensation or with the intent to sell" as used in ORS 701.005 is not intended to include real estate licensees engaged in professional real estate activities as defined in ORS 696.010(13).

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005, 701.010, 701.026 & 701.131
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0345
Hours of Training

"Hours of Training" as used in OAR 812-006-0200 to 812-006-0250 of these rules refers to clock hours, not credit hours. "Hours of training" does not include time spent for registration or breaks.

Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.072 & 701.122
Hist.: CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0420
Lapse in License

"Lapse in license" as used in ORS 701.131(2)(b), 701.063(4); OAR 812-006-0020(1)(b), and 812-006-0020(2)(b) commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed, reissued or reinstated by the agency.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063, 701.131 & 701.225
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2003(Temp), f. & cert. ef. 7-9-03 thru 1-3-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0440
Last-Known Address of Record

(1) "Last-known address of record" for a contractor, as used in ORS 701.117, or for a complainant means the most recent of:

(a) The mailing address provided by the contractor or complainant in writing to the agency, designated by the contractor or complainant as the contractor's or complainant's mailing address; or

(b) The forwarding address for the contractor or complainant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

(2) A forwarding address is not effective as a "last known address of record" until the address is entered into agency records or seven calendar days after the agency receives notice of the forwarding address, whichever occurs first.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.117
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0443
Legal Capacity to Enter into Contracts

"Legal capacity to enter into contracts" as used in ORS 701.046(2)(b), means the attaining of the age of 18 for any sole proprietor, partner of any general partnership, limited liability partnership, limited partnership or joint venture, corporate officer, member, or any other persons similarly situated who holds or could hold the authority to enter into a contract on behalf of the licensed entity.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.046
Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0460
Monetary Damages

"Monetary damages" may include, but is not limited to:

(1) The dollar amount required in excess of the contract amount to provide the complainant what was agreed to be provided under the terms of the contract minus any amount due and unpaid the licensee; or

(2) The dollar amount paid to the licensee less the reasonable value of any work properly performed by the licensee, plus the cost to demolish work that has no value, and to restore the property to the condition it was in before work began.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.068 & 701.140
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0530
Office of Administrative Hearings

"Office of Administrative Hearings" means the Office of Administrative Hearings established under ORS 183.605.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.145 & 701.146
Hist.: CCB 7-2003, f. & cert. ef. 8-8-03; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0533
Officer

(1) "Officer", as used in ORS chapter 701 and these rules means:

(a) A person described as an "officer" in ORS 701.005;

(b) A partner in a partnership, or limited liability partnership;

(c) A responsible managing individual described in ORS 701.091; or

(d) A person who has a financial interest in a business and manages or shares in the management of the business; or

(2) "Officer", as used in ORS chapter 701 and these rules, includes an individual who has a financial interest in another business and who is an officer of that other business if that other business owns more than fifty percent of the particular business.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.091
Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0537
Owner

"Owner", as used in ORS 701.005, 701.046, 701.094, 701.098, 701.102, 701.227 and OAR 812-005-0210, means:

(1) A person described as an "owner" in ORS 701.094;

(2) A general partner in a limited partnership;

(3) A majority stockholder in a corporation;

(4) A manager in a manager-managed limited liability company;

(5) A member in a member-managed limited liability company; or

(6) A person who has a financial interest in a business and manages or shares in the management of the business.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005, 701.010, 701.046, 701.094, 701.098 & 701.227
Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-2006; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0630
Reinstate

A license is reinstated when licensure is approved by the Board after a lapse that occurred because the license was suspended. A reinstated license is effective from the date that the suspension ends.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063, 701.068 & 701.098(4)
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0635
Reissue

A license is reissued when licensure is approved by the Board after a lapse that occurred because the licensee failed to renew the license and failed to provide proof of bonding, letter of credit, or cash deposit coverage and insurance coverage during the lapse. A reissued license is effective from the date that the lapse ends.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063 & 701.068
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0640
Renewal

"Renewal" (of license) as used in ORS 701.063, 701.068, and 701.131 includes but is not limited to the act of submitting a replacement bond, a bond rider, or letter of credit or cash deposit, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any prerequisite education. A renewed license is effective from the last date on which the contractor was licensed, either because the renewal application was submitted and approved prior to the expiration date or because the Board, in accordance with ORS 701.063 and OAR 812-003-0290(3)(b), designated the last date on which the contractor was licensed as the effective date of licensure where a lapse in licensure occurred.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 670.310, 701.056, 701.063, 701.068, 701.073, 701.088, 701.105, 701.131 & 701.238
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0670
Respondent

"Respondent" means a contractor that a complaint is filed against under ORS 701.131 to 701.180 or that the board proposes to impose a civil penalty against under ORS chapter 701, including but not limited to ORS 701.992.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.131 - 701.180
Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 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 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0673
Signed by Respondent

"Signed by respondent," as used in OAR 812-004-0340, means signed by the respondent, if the respondent is a sole proprietorship, or an owner, officer, employee or authorized agent of the respondent.

Stat. Auth.: ORS 670.310, 701.133 & 701.235
Stats. Implemented: ORS 701.133
Hist.: CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0675
Small Commercial Structure

"Small commercial structure" has the meaning given that term in ORS 701.005.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005, 701.021, 701.139, 701.145, 701.146, 701.150 & 701.153
Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0760
Work as a Contractor Does Not Include

"Work as a contractor", as used in ORS 701.026 includes, but is not limited to:

(1) Except as modified by section (8) of this rule, construction, alteration, repair, improvement, inspection, set-up, erection, moving, or demolition of a structure or any other improvement to real estate, including activities performed on-site in the normal course of construction, or receiving and accepting any payments for the above.

(2) Concrete, asphalt and other testing that involves structural modifications, and soils testing associated with planned or existing structures.

(3) Construction management.

(4) Excavation, backfill, grading, and trenching for the structure or its appurtenances or to accomplish proper drainage and not for landscaping.

(5) Improvement of lots with the intent of selling lots with structure(s). This may include contracting with a primary contractor to construct, alter or improve structures.

(6) Inspection of cross connections and testing of backflow prevention devices performed by persons licensed under ORS 448.279 by the Health Division except when performed by a person licensed as a landscape contracting business as provided under ORS 671.510 through 671.710 or when performed by an employee of a water supplier as defined in ORS 448.115.

(7) Labor only, regardless of whether compensated by the hour or by the job.

(8) Pest control, if in the course of that work any structural modifications are performed. Structural modifications do not include the following when performed by a pesticide operator licensed under ORS 634.116. Installation of soil vapor barriers; sealing of holes, cracks, construction junctures or other small openings that allow the ingress of pests with mortar, plaster, caulking, or similar materials; installation of screens, bird netting and bird repellent devices; installation of rodent shields around utility entrances, doorways and other points of rodent ingress; and drilling of holes equal to or smaller than 3/8 inch in diameter for the purpose of injecting insecticides into small voids, removal and replacement of floor tiles for the purpose of drilling a slab floor for the control of subterranean termites; and the drilling of slab floors for control of termites.

(9) Shoring.

(10) Shelving attached to a structure.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 448.115, 448.279, 671.510 - 671.710, 701.005 & 701.026
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-002-0780
Work as a Contractor Does Not Include

"Work as a contractor", as used in ORS 701.026, does not include:

(1) Sign painting unless the total area of all signs is more than 60 square feet.

(2) Work performed by persons engaged in creating objects, which exist exclusively for aesthetic reasons and have no other function, for example, murals, sculptures, etc., if said work by such person does not incorporate electrical or plumbing.

(3) Work performed by government agencies, except a school district.

(4) Work performed in setting, placing, removing, or repairing grave markers or monuments in cemeteries.

(5) Work by an employee when both the employer and employee are in compliance with applicable employer/employee requirements of ORS chapters 305, 314, 316, 317, 318, 656, 657, and state and federal wage and hour laws.

(6) Concrete pumping.

(7) Utility connections done by utility company employees when the connection is owned by a utility company.

(8) Installation or repair of stand-alone industrial equipment when such activities are exempt from the requirement for a building permit under the Oregon Structural Specialty Code.

(9) Inspections done under contract with government agencies.

(10) Cable television work done by cable television franchise holders.

(11) Operation of a crane, including the lifting and placement of trusses or other construction materials onto the structure.

(12) Improvement of lots with the intent of selling the lots without structures when contracting with licensed contractors to perform the improvement of lots.

(13) Arranging for work to be performed by a licensed construction contractor when the person who arranges for the work is a real estate licensee, licensed under ORS chapter 696; the real estate licensee is representing the seller of the property; and the real estate licensee is acting as the agent for the seller, as evidenced by a contract or agreement between the real estate licensee and the seller.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 634.116, 701.010 & 701.026
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 1-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0110
Standards of Behavior

(1) A contractor shall not engage in dishonest or fraudulent conduct injurious to the welfare of the public.

(2) A contractor shall cooperate fully with any investigation undertaken by the Board pursuant to ORS 701.225.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.098 & 701.225
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0120
License Required to Advertise

(1) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, or insured unless that person holds a current, valid license.

(2) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS chapter 701 prepared by a contractor or at the contractor's request or direction, shall show the contractor's license number.

(b) All written bids, written inspection reports and building contracts subject to ORS chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) Except as set forth in subsection (2)(e) of this rule all business cards, business letterhead, business signs at construction sites, all advertising, shall show the contractor's license number. This rule is effective upon filing for all contractors filing for new license, and is effective for all existing contractors when they purchase new business cards, business letterhead, and business signs for construction sites, or January 1, 1998, whichever date occurs sooner.

(e) Subsection (2)(d) of this rule does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.010 & 701.026
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0160
Entity Name Required on Bond, Letter of Credit or Cash Deposit

(1) The name of the entity as it appears on the bond, letter of credit or cash deposit must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond, letter of credit or cash deposit must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond, letter of credit or cash deposit must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the bond, letter of credit or cash deposit must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the bond, letter of credit or cash deposit must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the bond, letter of credit or cash deposit;

(e) If the entity is a corporation or trust, the bond, letter of credit or cash deposit must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond, letter of credit or cash deposit must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

(3) The inclusion or exclusion of business name(s) on a bond, letter of credit or cash deposit does not limit the liability of an entity. Complaints against a licensed entity will be processed regardless of business names used by an entity.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0180
Effective and Cancellation Dates of the Bond, Letter of Credit or Cash Deposit

(1) The surety bond, letter of credit or cash deposits effective date is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

(2) The bond shall remain in effect and be continuous until cancelled by the surety or until the licensee no longer meets the requirements for licensing as determined by the agency, whichever comes first.

(3) A surety bond may be cancelled by the surety only after the surety has given 30 days' notice to the agency. Cancellation will be effective no less than 30 days after receipt of the cancellation notice.

(4) The letter of credit or cash deposit shall remain in effect and be continuous until released by the agency.

(5) Immediately upon cancellation of the bond, or cancellation without an authorized release by the agency of a letter of credit or cash deposit the agency may send an emergency suspension notice to the contractor as provided for in ORS 701.098(4)(a)(A), informing the contractor that the license has been suspended.

(6) The bond, letter of credit or cash deposit shall be subject to final orders as described in OAR 812-004-0600.

(7) The surety or financial institution will be responsible for ascertaining the bond, letter of credit or cash deposit's effective date.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.085 (2005), 701.068, 701.088 & 701.098
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0190
New Bond, Letter of Credit or Cash Deposit Required for Change in Entity

(1) If an entity licenses as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types, the application must be accompanied by a new:

(a) Bond separate from the bond held for the previous entity;

(b) Letter of credit separate from the letter of credit held for the previous entity; or

(c) Cash deposit separate from the previous cash deposit held for the previous entity.

(2) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.085 (2005), 701.068, 701.088
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0210
Entity Name Required on Insurance Certification

(1) The name of the entity as it appears on the certificate of insurance or other evidence of insurance must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the certificate of insurance or other evidence of insurance must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the certificate of insurance or other evidence of insurance must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the certificate of insurance or other evidence of insurance must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the certificate of insurance or other evidence of insurance must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the certificate of insurance or other evidence of insurance;

(e) If the entity is a corporation or trust, the certificate of insurance or other evidence of insurance must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the certificate of insurance or other evidence of insurance must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.073
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0240
Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule

is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for "independent contractors". One requirement is that an "independent contractor" must be engaged in an "independently established business." Another requirement is related to licenses and certificates that are required for an "independent contractor" to provide services. A third requirement is that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others.

(b) The specific focus of this rule is the "direction and control" requirement. See ORS 670.600 for the requirements of the "independently established business" test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the "direction and control" test:

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) "Manner" is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) "Free from direction and control" means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor's services does not constitute direction and control over the means or manner of providing those services.

(4) Application of "direction and control" test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscape contracting businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor's services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(5) As used in ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

(6) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

(7) The Board adopts the form "Independent Contractor Certification Statement" as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS 701.046(1)(k).

Stat. Auth.: ORS 670.310, 670.605 & 701.235
Stats. Implemented: ORS 670.600, 670.605, 701.005 & 701.046
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 1-2007, f. 1-25-07, cert. ef. 2-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0250

Exempt and Nonexempt Class of Independent Contractor Licenses

Contractors shall license as either nonexempt or exempt as provided in ORS 701.035.

(1) The nonexempt class is composed of the following entities:

(a) Sole proprietorships with one or more employees;

(b) Partnerships or limited liability partnerships with one or more employees;

(c) Partnerships or limited liability partnerships with more than two partners if any of the partners are not family members;

(d) Joint ventures with one or more employees;

(e) Joint ventures with more than two joint venturers if any of the joint venturers are not family members;

(f) Limited partnerships with one or more employees;

(g) Limited partnerships with more than two general partners if any of the general partners are not family members;

(h) Corporations with one or more employees;

(i) Corporations with more than two corporate officers if any of the corporate officers are not family members;

(j) Trusts with one or more employees;

(k) Trusts with more than two trustees if any of the trustees are not family members.

(l) Limited liability companies with one or more employees; or

(m) Limited liability companies with more than two members if any of the members are not family members.

(2) The exempt class is composed of sole proprietors, partnerships, joint ventures, limited liability partnerships, limited partnerships, corporations, trusts, and limited liability companies that do not qualify as nonexempt.

(3) An exempt contractor may work with the assistance of individuals who are employees of a nonexempt contractor as long as the nonexempt contractor:

(a) Is in compliance with ORS chapters 316, 656, and 657 and is providing the employees with workers' compensation insurance; and

(b) Does the payroll and pays all its employees, including those employees who assist an exempt contractor.

(4) Except as provided in section (5) and (6) of this rule, entities shall supply the following employer account numbers as required under ORS 701.046:

(a) Workers' Compensation Division 7-digit compliance number or workers' compensation insurance carrier name and policy or binder number;

(b) Oregon Employment Department and Oregon Department of Revenue combined business identification number; and

(c) Internal Revenue Service employer identification number or federal identification number.

(5) Exempt entities are not required to supply employer account numbers under section (4) of this rule except as follows:

(a) Partnerships, joint ventures, limited liability partnerships, and limited partnerships that have no employees and are not directly involved in construction work may be classed as exempt when the entity certifies that all partners or joint venturers qualify as nonsubject workers under ORS 656.027. Such partnerships or joint ventures must supply the Internal Revenue Service employer identification number or federal identification number.

(b) Corporations qualifying as exempt under ORS 656.027(10) must supply the Oregon Employment Department and Oregon Department of Revenue combined business identification number unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation.

(c) Corporations qualifying as exempt must supply the Internal Revenue Service employer identification number or federal identification number.

(d) Limited liability companies must supply the Internal Revenue Service employer identification number or federal identification number unless the limited liability company has only one member and has no employees.

(6) Nonexempt entities that qualify under ORS 656.027(20) need not supply an Oregon workers' compensation account number or workers' compensation insurance carrier name and policy or binder number.

(7) Out-of-state applicants with no Oregon subject workers as provided in ORS 656.126 and OAR 436-050-0055 must supply their home state account numbers, and need not supply an Oregon workers' compensation account number.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992
Stats. Implemented: ORS 701.035 & 701.098
Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0002; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0310
License Cards

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-003-0270 or 812-003-0290.

(2) A license and pocket card is valid for the term for which it is issued only if all of the following conditions are met throughout the license period:

(a) The surety bond, letter of credit or cash deposit remains in effect and undiminished by payment of Construction Contractors Board final orders.

(b) The insurance required by ORS 701.073 remains in effect.

(c) If the licensee is a sole proprietorship, the sole proprietorship survives.

(d) If the licensee is a partnership or limited liability partnership, the composition of the partnership remains unchanged, by death or otherwise.

(e) If the licensee is a corporation, trust, or limited liability company, the corporation, trust or limited liability company survives and complies with all applicable laws governing corporations, trusts or limited liability companies.

(3) If the licensee's bond is cancelled, the license will lapse 30 days from the date the cancellation is received by the agency.

(4) If a license becomes invalid, the agency may require the return of the license and pocket card.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063 & 701.088
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0320
Record Changes

(1) Except as provided in section (3) of this rule, requests for record changes that require a new license card shall be accompanied by a $20 fee.

(2) Except as provided in OAR 812-003-0190, requests for business name amendments of a partnership, joint venture, corporation, limited liability company or limited liability partnership shall be accompanied by a rider from the surety and a new Certificate of Insurance to reflect the amended name.

(3) No charge will be made for an address change on the record.

(4) With the exception of record changes due to agency error, a record change request shall be submitted in writing.

Stat. Auth.: ORS 670.310, 701.235 & 701.238
Stats. Implemented: ORS 701.056, 701.068, 701.088 & 701.238
Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0015; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 10-2000, f. & cert. ef. 8-24-00; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0005; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0330
Inactive Status Generally

(1) A licensee may not convert a license to an inactive status if the licensee is engaged in work as a contractor.

(2) A licensee may not offer to undertake work, advertise work as a contractor, submit a bid for construction work, obtain a building permit or perform construction work while in an inactive status.

(3) A licensee shall notify the agency of any change of address while in an inactive status. During the period when the status of a license is inactive, the agency shall send notices and any other communications to the licensee at the last known address of record of the licensee.

(4) To convert to an inactive status:

(a) A licensee must have a current active license or a license that lapsed no more than two years prior to the application for inactive status;

(b) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(c) The licensee must submit a request to convert to inactive status on forms provided by the agency; and

(d) The licensee must comply with OAR 812-003-0340, 812-003-0350, and 812-003-0360.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.056 & 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0350
Inactive Status Request at Interim Renewal Period

(1) A request to convert a license to inactive status made prior to the expiration date of the license, but at a time other than the time of renewal of the license, will be accepted only if the licensee making the request has paid all applicable fees required under OAR 812-003-0140 and 812-003-0320.

(2) If a license is converted to inactive status prior to the expiration date of the license but at a time other than the time of renewal of the license, the effective dates of the license will remain unchanged and the license will expire at the upcoming expiration date.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0370
Renewal of Inactive Status

To renew an inactive license in an inactive status:

(1) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(2) The licensee must submit the request to renew the license in inactive status on forms provided by the agency; and

(3) The licensee must submit the fees required under OAR 812-003-0140.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.056 & 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0380
Converting From Inactive Back to Active Status

(1) To convert from an inactive status to an active status, the licensee must:

(a) Submit a request to convert to an active status on forms provided by the agency; and

(b) Comply with section (3), (4) or (5) of this rule as applicable.

(2) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:

(a) Submit the fees required under OAR 812-003-0140;

(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(c) Comply with all other licensing requirements prescribed by the Board.

(3) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:

(a) Submit all fees to date as required by OAR 812-003-0140 and 812-003-0320;

(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(d) Comply with all other licensing requirements prescribed by the Board.

(4) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:

(a) Request the conversion within two years from the date of lapse;

(b) Comply with all licensing requirements prescribed by the Board;

(c) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(d) Submit all fees required under OAR 812-003-0140.

(5) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.056, 701.063 & 701.088
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0390
Revocation or Suspension of License

(1) Except as provided in section (2) of this rule, if the agency issues a final order or arbitration award ordering a licensee to pay monetary damages and the licensee or the licensee's surety fails to pay the order or award in full, the agency will revoke, suspend, or refuse to issue or reissue a license.

(2) Section (1) of this rule shall not apply if the licensee submits proof to the agency that:

(a) A United States Bankruptcy Court issued an automatic stay under Title 11 of the United States Bankruptcy Code and that stay is currently in force; or

(b) The order or award described in section (1) of this rule arises from a debt that:

(A) Is included in an order of discharge issued by a United States Bankruptcy Court; or

(B) Is included in a Chapter 11 plan and order conforming the plan issued by a United States Bankruptcy Court that prohibits the agency from revoking, suspending, or refusing to issue or reissue the licensee's contractor's license and the licensee is in compliance with the terms of the plan and order.

(3) The agency shall revoke, suspend, or refuse to issue or reissue a license under section (1) of this rule if:

(a) The agency previously was prevented from revoking or suspending a license or was required to issue or reissue a license under section (2) of this rule; and

(b) The licensee's bankruptcy discharge is revoked or the bankruptcy stay is lifted.

Stat. Auth.: ORS 183.310 - 183.545, 670.310, 701.235 & 701.280
Stats. Implemented: ORS 701.100 & 701.098
Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 5-1981(Temp), f. 12-30-81, ef. 1-1-82; 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 812-011-0040; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0030; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0400
Restoration of Bond, Letter of Credit or Cash Deposit after Payment on Complaint

If a surety company or financial institution pays all or part of a complaint against a licensed contractor from the contractor's surety bond, letter of credit or cash deposit, the agency must suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond, letter of credit or cash deposit in the amount required under ORS 701.085(2) through (5) (2005), 701.068 or 701.088 unless the agency requires a higher amount under ORS 701.085(7) or (8) (2005) or 701.068; or

(2) A certificate from the contractor's surety company or financial institution that the surety company or financial institution remains liable for the full original penal sum of the bond, letter of credit or cash deposit, notwithstanding the payment from the surety bond letter of credit or cash deposit.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.085(2005), 701.068, 701.088
Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0040; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0410
Social Security Number

(1) The agency will not issue or renew a license issued to a sole proprietorship unless the owner provides his or her social security number on the application or renewal form. The owner need not provide the social security number on the application for renewal, if the owner's social security number has previously been provided to the agency and is in the record.

(2) If the owner of a sole proprietorship has not been issued a social security number by the United States Social Security Administration, the agency will accept a written statement from the owner to fulfill the requirements of section (1) of this rule. The owner may submit the written statement on a specified agency form with the requisite information. Any written statement must:

(a) Be signed by the owner;

(b) Attest to the fact that no social security number has been issued to the owner by the United States Social Security Administration; and

(c) Acknowledge that knowingly supplying false information under this rule is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to $6,250.

Stat. Auth.: ORS 25.990, 183.310, 670.310 & 701.235
Stats. Implemented: ORS 25.270, 25.785, 25.990, 183.310 & 701.046
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-003-0430
Time Period for Perfecting a Lien or Complaint

For liens perfected and claims or complaints commenced on or after January 1, 1998:

(1) The time period under ORS 701.131(2)(a)(A) and 701.131(2)(c)(B) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(2) The time period under ORS 701.131(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.131
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

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 ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 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. 72, No. 15, January 24, 2007, pp. 3147-3148.

(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 701.133 & 701.146
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

812-004-0120
Liability of Licensee

A licensee, as defined in OAR 812-002-0620, participating in a corporation wholly owned by the licensee, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held individually liable for complaints brought under ORS 701.131 to 701.180, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership, or partnership was licensed as required by ORS chapter 701.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.102, 701.139, 701.140 & 701.145
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 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0210
Address of Complainant and Respondent

(1) Initial notice of a contested case or of arbitration conducted by the agency directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last know address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 10 days of any change in the party's address, withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the complaint and until 90 days after the date the agency notifies the parties that the complaint is closed.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.117
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0240
Exhaustion of Surety Bond, Letter of Credit or Cash Deposit

The agency may continue processing a complaint even though the surety bond, letter of credit or cash deposit related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310, 701.235
Stats. Implemented: ORS 183.415, 183.460, 701.085 (2005), 701.068, 701.088, 701.145 & 701.150
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0250
Award of Complaint-Processing Fee, Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a complaint that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 (2005), 701.068 or 701.088, including, but not limited to an order of the board arising from a judgment, award or decision by a court, arbitrator or other entity may not include an award for:

(a) Attorney fees;

(b) Court costs;

(c) Interest;

(d) Costs to pursue litigation or the complaint;

(e) Service charges or fees; or

(f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the complaint.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 (2005), 701.068 or 701.088 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien complaint may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

(b) An order or arbitration award in an owner complaint may include interest expressly allowed as damages under a contract that is the basis of the complaint.

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a complaint processing fee paid by the complainant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court, arbitrator or other entity that are related to the portion of the order or award of the court, arbitrator or other entity that is within the jurisdiction of the board if the order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

(A) That was initiated by the respondent; or

(B) That the agency required the complainant to initiate under ORS 701.145 because of the nature or complexity of the complaint.

(3) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183.415, 183.460, 701.068, 701.088, 701.145, 701.146
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; 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 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0300
Filing Date of Complaints

(1) Except as provided under section (3) of this rule, a complaint submitted to the agency for processing under ORS 701.145 is deemed to have been filed when a Breach of Contract Complaint is received by the agency that:

(a) Meets the requirements of OAR 812-004-0340(1) and (2)(m); and

(b) Contains information sufficient to identify the complainant and respondent.

(2) The agency must return a Breach of Contract Complaint that does not meet the requirements of section (1) of this rule to the person who submitted the complaint.

(3) If the agency returns a Breach of Contract Complaint to a person under section (2) of this rule because the person did not meet the requirements of OAR 812-004-0340(2)(m) related to pre-complaint notice, that person may resubmit the Breach of Contract Complaint with the required evidence. If the resubmitted Breach of Contract Complaint satisfies the agency that the person met the requirements under OAR 812-002-0340(2)(m,) before the agency received the original Breach of Contract Complaint, the complaint is deemed to have been filed on the date the Breach of Contract Complaint was first received by the agency.

(4) A Breach of Contract Complaint that does not fully comply with the requirements of OAR 812-004-0340 is subject to OAR 812-004-0350.

(5) The date of filing of a complaint submitted to the agency for processing under ORS 701.146 is the date when the complainant complies with ORS 701.133(1) and 701.146(2).

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.139, 701.143, 701.145 & 701.146
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 8-2004, f. & cert. ef. 10-1-04; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0340
Form of Complaints, Pre-Complaint Notice

(1) A complaint must be submitted on a complaint form provided by the agency. The complaint form shall be entitled "Breach of Contract Complaint." The agency may require the use of the most recent revision of the complaint form.

(2) The complainant must submit the following information on or with the complaint form required under section (1) of this rule if applicable:

(a) The name, address and telephone number of the complainant;

(b) The name, address, telephone number and license number of the licensee;

(c) The amount, if known at the time the complaint is filed, that the complainant alleges is due from the licensee after crediting payments, offsets and counterclaims in favor of the licensee to which the complainant agrees;

(d) Identification of the type of complaint;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

(g) The location of the work at issue in the complaint, described by a postal address or other description sufficient to locate the work site on a map and on the ground;

(h) The beginning and ending date of the work or invoices;

(i) Payments, offsets and counterclaims of the contractor, if known;

(j) Whether the project involves work on a residential, small commercial or large commercial structure;

(k) A certification by the complainant that the information provided on the complaint form is true;

(l) If a court judgment or arbitration award is the basis for the complaint, a copy of the judgment or award, the original complaint and any answers or counter-suits related to the parties to the complaint filed in the court action or arbitration;

(m) Documents described in section (9) of this rule that are related to the pre-complaint notice requirement in ORS 701.133.

(n) Additional information required under sections (3) through (8) of this rule.

(3) A subcontractor complaint must include copies of each original invoice relating to the complaint.

(4) An employee complaint must include copies of time cards or other evidence of the amount of wages or benefits requested.

(5) An employee trust complaint must include the name of each employee that is the subject of the complaint, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

(a) The hours worked without payment of employee benefits;

(b) The amount of the unpaid benefits;

(c) The address of the job site where the employee worked; and

(d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien complaint must include evidence that the complainant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lienor, if applicable, and any foreclosure documents.

(7) A material complaint must include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the complaint.

(8) A complaint involving negligent or improper work must include a list of the alleged negligent or improper work. A complaint involving a breach of contract must describe the nature of the breach of contract.

(9) A complaint must include one of the following:

(a) A copy of the pre-complaint notice required under ORS 701.133 and of the certified or registered mail receipt for the pre-complaint notice; or

(b) Written evidence that the respondent had actual notice of the dispute that is the subject of the complaint at least 30 days before the complainant filed the complaint. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:

(A) A return receipt signed by the respondent indicating receipt of a notice of intent to file a complaint sent to the respondent by the complainant; or

(B) A letter signed by the respondent acknowledging receipt of a notice of intent to file a complaint.

(c) Written evidence that the complainant and the respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the complaint. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:

(A) Copies of a complaint or answer in the court action; or

(B) Copies of a document that initiated the mediation or arbitration.

(d) Evidence that the complainant and the respondent are parties to another complaint filed with the agency arising from the same contract or issues that are the subject of the complaint.

(10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by the complainant alleging that the respondent had actual knowledge of the dispute as written evidence required under section (9) of this rule.

(11) The completed complaint form must be signed by the complainant or an agent of the complainant.

(12) A complaint form submitted to the agency that does not comply with the requirements of this rule is subject to OAR 812-004-0350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 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 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 11-2003, f. 12-5-03, cert. ef. 1-1-04; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0400

Initial Administrative Processing of Complaints; Collection of Fee

(1) Upon receipt of a complaint, the agency must:

(a) Send a copy of the complaint to the respondent;

(b) Verify that the complainant has provided information required under OAR 812-004-0340 and request additional information from the complainant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the complaint based on the information provided by the complainant;

(d) If the agency makes a preliminary determination that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee. Except as provided in section (2) of this rule, the agency may suspend processing of the complaint until complainant pays this fee.

(e) If the agency determines that the complaint should be dismissed based on the information submitted by complainant, the agency must issue a proposed order to dismiss under OAR 812-004-0550. If the complainant requests a hearing on the dismissal and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee and may not transmit the complaint to the Office of Administrative Hearings for a hearing until the fee is paid.

(f) If the complainant does not pay the fee required under OAR 812-004-0110 within 60 days of written notification that the fee is due, the agency may close the complaint. The request for payment and closure must comply with OAR 812-004-0260.

(2) The agency may initiate an investigation to determine the validity of the complaint. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a complaint even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.133, 701.140, 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 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0440

Contracts with Arbitration Agreements

(1) If a complaint is based on a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as set forth in ORS 701.180. Unless the contract requires mediation or arbitration by the agency, the agency must take the following action:

(a) The agency must inform the complainant by written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the complaint unless the agency receives within 30 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the complainant; or

(B) Evidence that the complainant or respondent initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the complaint.

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (1)(a) of this rule from the complainant within 30 days from the date of the written notice described in subsection (1)(a) of this rule, the agency may close the complaint under OAR 812-004-0260. The agency may not close the complaint under section (1) of this rule if the respondent initiates mediation or arbitration under the contract before the expiration of the 30-day period for providing the waiver or evidence that mediation or arbitration was initiated.

(c) The agency must inform the respondent by written notice that:

(A) If the respondent wants the issues in the complaint mediated or arbitrated under the contract, respondent must initiate the mediation or arbitration process under the contract within the time allowed under ORS 701.180 and submit evidence to the agency within 40 days from the date of the agency's written notice that the respondent initiated mediation or arbitration under the contract.

(B) If the respondent does not initiate mediation or arbitration and submit evidence within the time provided in paragraph (1)(c)(A) of this subsection, the respondent waives the right to mediation or arbitration under the contract;

(C) The agency will continue to process the complaint until the agency receives the evidence required under paragraphs (1)(c)(A) and (B) of this subsection; and

(D) If the respondent submits timely evidence that the respondent began mediation or arbitration within the time allowed under ORS 701.180, the agency will suspend processing of the complaint pending the outcome of the mediation or arbitration under the contract.

(d) If mediation or arbitration under the contract is properly commenced under this section (1) of this rule, the agency must suspend processing the complaint until the mediation or arbitration is complete.

(2) If a complaint is based on a contract that contains an agreement by the parties to mediate and arbitrate disputes arising out of the contract, the complaint must be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and arbitration within the time allowed under ORS 701.180 if:

(a) The respondent commences mediation within the time allowed under ORS 701.180; and

(b) If the complaint is not resolved in mediation, the respondent submits to arbitration within 30 days of the completion of mediation, unless the parties to the complaint mutually agree on a different schedule.

(3) Notwithstanding receipt of a notice of intent to file a complaint under ORS 701.133 or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under subsection (1)(c) of this rule.

(4) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the complaint as a contested case.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.180

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 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 812-011-0053; 1BB 3-1984, f. & ef. 5-11-84; 1BB 2-1985(Temp), f. & ef. 3-5-85; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0015; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0042; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; 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 8-2004, f. & cert. ef. 10-1-04; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0470

Challenge to Investigation Report

The complainant or respondent may challenge and offer evidence to disprove the agency's investigation report, if any, at an arbitration or contested case hearing.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145

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; Renumbered from 812-004-0580; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0520

Processing of Complaint Submitted to Court, Arbitrator or Other Entity

(1) "Court, arbitrator or other entity" has the meaning given that phrase in division 2 of this chapter.

(2) The agency may suspend processing a complaint if:

(a) The respondent submits a complaint against the complainant to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against the respondent, including but not limited to a breach of contract complaint or a suit to foreclose a lien involving the same contract at issue in the complaint;

(b) The complainant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against respondent; or

(c) The agency requires the complainant to submit the complaint to a court because the agency determined that a court is the appropriate forum for the adjudication of the complaint because of the nature or complexity of the complaint.

(d) The complainant in an owner complaint involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(3) If the agency suspends processing a complaint under section (2) of this rule, the agency must notify the complainant on the date it suspends processing the complaint that processing has been suspended. The following provisions apply to the agency and the complainant if processing is suspended:

(a) The notice of suspension of processing must include notice of the requirements contained in subsections (3)(b) and (d) of this rule and must comply with the requirements of OAR 812-004-0260.

(b) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect.

(c) The agency may, at any time, demand from the complainant a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect. The demand must be in writing and must comply with the requirements of OAR 812-004-0260. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(d) Within 30 days from the date of final action by the court, arbitrator or other entity, the complainant must deliver to the agency a certified copy of the final judgment; a copy of the arbitration award or decision by another entity and a copy of the complaint or other pleadings on which the judgment, award or decision is based.

(e) If the complainant complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the complaint. If the complainant does not comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the complaint under OAR 812-004-0260.

(4) If the agency suspends processing a complaint under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant that the complainant must file the complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the complainant has done so within 30 days from mailing of the notice. The notice must comply with the requirements of OAR 812-004-0260.

(b) If the complainant does not submit the evidence as required under subsection (4)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(5) If the agency suspends processing a complaint under subsection (2)(c) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant, in a notice that complies with the requirements of OAR 812-004-0260, that agency has suspended processing the complaint and that the complainant must:

(A) File the complaint as a complaint in a court of competent jurisdiction within 90 days from notice that the agency has suspended processing the complaint; and

(B) Submit evidence, including a copy of the complaint, to the agency that the complainant complied with paragraph (5)(a)(A) of this rule within 21 days of filing the complaint.

(b) If the complainant does not submit the evidence as required under subsection (5)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(6) If the agency resumes processing a complaint under section (3) of this rule:

(a) The agency must accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the complaint.

(b) Based on the judgment, award or decision, the agency must issue a proposed default order to pay damages or to dismiss or refer the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection (6)(b) of this rule:

(A) The provisions of OAR 812-004-0560 and 812-004-0590 apply to a proposed default order or a referral to the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under section (6) of this rule must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge must determine the portion of the final judgment, award or decision, if any, that is within the jurisdiction of the agency.

(7) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-

0450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183.415, 183.460, 701.133, 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 2-2001, f. & cert. ef. 4-6-01; 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 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0535
Elements of Complaint That Must Be Proved

The following provisions apply to OAR 812-004-0540(5) and (6), 812-004-0550(2), 812-009-0100 and 812-009-0120:

(1) Except as provided in section (3) of this rule, in order for the agency to award damages to the complainant the record of the complaint must contain evidence that persuades the agency, arbitrator or administrative law judge that:

(a) The complainant suffered damages;

(b) The respondent caused those damages by acts or omissions within the scope of ORS 701.140; and

(c) The monetary value of those damages is substantiated on the record.

(2) The agency must dismiss the complaint if the evidence in the record of the complaint does not persuade the agency, arbitrator or administrative law judge of the existence of the facts described in section (1) of this rule.

(3) Notwithstanding the presence of evidence described in section (1) of this rule, a complaint for damages must be dismissed if the record of the complaint contains evidence that persuades the agency, arbitrator or administrative law judge that the complainant is not entitled to recover the damages. Evidence that the complainant may not be entitled to recover all or part of the damages alleged includes, but is not limited to a valid release of liability or a valid limitation of damages.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146
Hist.: 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 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0540
Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

(1) A complainant may seek monetary damages if the agency has not closed the complaint and:

(a) The complainant disagrees with the resolution recommended by the agency;

(b) The respondent cannot or will not comply with the recommended resolution; or

(c) The parties signed a settlement agreement but, through no fault of the complainant, the respondent failed to satisfy one or more terms of the settlement agreement, and the complainant so advises the agency in writing within 30 days from the date the settlement agreement was to have been completed.

(2) If the complainant seeks monetary damages or the agency so requests, the complainant must file a statement of damages stating the amount the complainant alleges the respondent owes the complainant, limited to complaint items listed in the Breach of Contract Complaint and those complaint items added up to and through any initial on-site meeting. The agency may require the complainant to submit, in support of the amount alleged:

(a) One or more estimates from licensed contractors for the cost to correct the complaint items; or

(b) Other bases for a monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the complaint for an arbitration or contested case hearing under section (4) of this rule after each party to the complaint has had an opportunity to provide evidence supporting its position with regard to the complaint. The agency may require that the complainant file a statement of damages and supporting evidence described under section (2) of this rule, except that the statement of damages must be limited to complaint items listed in the Breach of Contract Complaint.

(4) After the agency receives documents required under sections (2) or (3) of this rule, the agency may:

(a) Issue a proposed default order proposing dismissal of the complaint under OAR 812-004-0550(2) or payment of an amount by the respondent to the complainant; or

(b) Refer the complaint to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the complaint and whether the amount of damages alleged, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to the complainant only if the record of the complaint supports an award of damages under OAR 812-004-0535.

(b) The agency may issue a proposed default order that is not described in subsections (5)(a) or (6)(a) of this rule only if the record of the complaint contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6)(a) If the record of a complaint supports an award of damages to the complainant under OAR 812-004-0535 and the respondent pays the complainant the amount of those damages after the complainant submits to the agency the complaint processing fee required under OAR 812-004-0110, the agency may issue a proposed default order proposing that the respondent reimburse the complainant the amount of the processing fee paid.

(b) Subsection (6)(a) of this rule does not apply if the respondent paid damages to the complainant to satisfy a written settlement agreement that the complainant signed.

(c) Before issuing a proposed default order under subsection (6)(a) of this rule, the agency must notify the respondent of the agency's intent to issue the proposed order and allow the respondent 30 days to submit written evidence that the respondent reimbursed the complaint processing fee to the complainant.

(7) 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 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; Hist.: 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 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; 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 9-2008, f. 6-11-08, 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)(b).

(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

812-004-0560
General Requirements for Proposed Default Order or Referral to Office of Administrative Hearings, Hearing Request

(1) A proposed default order on a complaint issued by the agency must include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for arbitration or a contested case hearing must:

(a) Comply with 812-004-0590, which regulates whether the complaint will be arbitrated or heard as a contested case hearing.

(b) Comply with OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) Include a contested case notice if the agency did not issue a contested case notice under OAR 137-003-0505 before the agency's referral of the complaint to the Office of Administrative Hearings.

(3) If the agency refers a complaint to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the complainant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings must identify by date the statement of damages or the Breach of Contract Complaint that limits the amount that the respondent may be ordered to pay the complainant and state the amount that the order is limited to under OAR 812-009-0160 and 812-010-0420.

(b) The agency must serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a complainant under OAR 812-009-0160 and 812-010-0420; and

(B) The procedure to file a new statement of damages under OAR 812-009-0020 and 812-010-0110.

(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date the agency mails a proposed default order.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6) A contested case notice issued under this rule must include a statement that the agency's file on the complaint is designated as the record for purposes of a default order under this rule and for purposes of a contested case hearing or arbitration on the complaint. For purposes of this rule, the agency's file consists of all documents submitted by parties, all agency correspondence with the parties and any other material designated by the agency as part of the record.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 183.415, 183.417, 183.460, 183.470, 701.133 & 701.145
Hist.: 1BB 1-1986, f. & ef. 5-30-86; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0004; 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 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-004-0590
Referral of Complaint to Arbitration or Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings conducts a hearing on a complaint:

(a) The hearing must be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing must be held as a contested case hearing under OAR 137-003-0501 to 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the complaint makes a timely written request under section (4) of this rule that the complaint be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the complaint be heard as a contested case.

(2) Subject to section (3) of this rule, a complaint must be decided in court if:

(a) The complainant files a complaint in court that alleges the elements of the complaint in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the complaint and that allows the complainant to file a response alleging the elements of the complaint.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limit in this rule constitutes waiver of the right to have the complaint decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a complaint be heard as a contested case filed under subsection (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(b) A referral of a complaint to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the complaint be heard as a contested case under subsection (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the complaint.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the complaint being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the complainant in a complaint does not seek $1,000 or more, a hearing on the complaint may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the complaint under ORS 701.131 to 701.180 is at issue;

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the complaint; or

(c) The agency determines, in its discretion, that a contested case hearing is in the interest of one or more of the parties or of the agency.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.133 & 701.145
Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; 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 8-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-005-0100
Notice of Intent to Take Action

Except as provided under authority of ORS 701.098(4), if the agency intends to revoke or suspend a license, or assess a civil penalty, it shall issue and serve on the respondent a notice of intent to take an action, giving the opportunity for hearing. The notice may include the statement that an answer to the assertions or charges will be required.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992
Stats. Implemented: ORS 183.413, 183.415, 183.470 & 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)(a), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-005-0140
Emergency Suspension

The Administrator of the Board may immediately suspend or refuse to renew a license without a prior hearing, in accordance with ORS 701.098(4), in cases where the Administrator of the Board has in its possession a prima facie case of a wrongful act as described in ORS 701.098(4)(a)(A)-(D) having been committed by a contractor and upon a finding by the Administrator that the contractor is a serious danger to the public welfare. The respondent shall be entitled to a hearing on the Administrator's action if the respondent requests such a hearing within 90 days after the date of the notice to the respondent, as provided in ORS 701.098(4).

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(2), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-005-0160
Failure to Pay a Civil Penalty

The agency may revoke, suspend, or refuse to issue or reissue the license of any contractor who fails to pay on demand a civil penalty which has become due and payable.

Stat. Auth.: ORS 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(4), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-005-0170
Status of Backdated License

Notwithstanding any back-dating of a renewal, a person shall be in violation of ORS 701.026 if, at the time a person undertakes, offers to undertake, or submits a bid to do work as a contractor, the person is not actively licensed with the Board.

Stat. Auth.: ORS 670.310, 701.235 & 701.992
Stats. Implemented: ORS 701.026 & 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(5), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-005-0200
Unpaid Final Orders that Exceed the Contractor's Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.085(7)(2005) or 701.068, the agency must suspend the license of a licensee if the agency issues a final order on a complaint that exceeds the amount of the bond, letter of credit or cash deposit available to pay the order.

(2) A suspension issued under section (1) of this rule must remain in effect until the unpaid amount of the order is paid or until the license of the licensee expires.

(3) The agency may not reinstate or renew a license suspended under section (1) of this rule until the final order described in section (1) of this rule and any subsequently issued order that is unpaid, is paid, or discharged in bankruptcy.

(4) As a condition of ending a suspension or renewing a license that was suspended under ORS 701.085(7)(2005) or 701.068, and section (1) of this rule, the agency may require a licensee to file a bond, letter of credit or cash deposit up to five times as much as the amount required of a licensee under ORS 701.085(2) to (5) (2005) or 701.0688. The amount of the increased bond, letter or credit or cash deposit required must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.085(2005), 701.068 or 701.088.

(b) If the sum of the unpaid final orders described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085(2005), 701.068 or 701.088.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.085(2005), 701.068 or 701.088.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.085 (2005), 701.068 & 701.088
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; Renumbered from 812-003-0170(3)(c), 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-005-0210
Conditions to Require an Increased Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.085(8) (2005) or 701.068, the agency may require a bond, letter of credit or cash deposit of up to five times the normally required amount, if it determines that a current or previous license of an owner or officer, as those terms are defined in division 2 of these rules, has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance.

(b) Five or more breach of contract complaints filed under ORS 701.131 to 701.180 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint.

(c) An unpaid construction debt as defined in ORS 701.005(2) that exceeds the amount of the bond, letter of credit or cash deposit.

(2) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(a) of this rule must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.085 (2005), 701.068 or 701.088.

(b) If the sum of the unpaid final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.085 (2005), 701.068 or 701.088.

(3) The amount of increased bond, letter of credit or cash deposit the agency may require under subsection (1)(b) of this rule will be based on the number of complaints filed and the time period that the complaints were received as follows:

(a) Two times the bond, letter of credit or cash deposit amount required under ORS 701.085 if five or more complaints are received in any twelve-month period.

(b) Three times the bond, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088 if five or more complaints are received in any six-month period.

(c) Five times the bond, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088 if five or more complaints are received in any three-month period.

(4) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(c) of this rule must conform to the following schedule:

(a) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the bond amount required under ORS 701.085 (2005), 701.068 or 701.088.

(b) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088.

(c) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit five times the bond, letter of credit or cash deposit amount required under ORS 701.085 (2005), 701.068 or 701.088.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.005, 701.085 (2005), 701.068, 701.088 & 701.094
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; Renumbered from 812-003-0170(3)(a)-(c), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06: CCB 7-2006, f. & cert. ef. 6-23-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 12-2006, 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-005-0250
Repeal of Increased Bond, Letter of Credit or Cash Deposit Requirement

(1) Under ORS 701.085(7) or (8) (2005) or 701.068 after two years of operating under the increased bond, letter of credit or cash deposit, an applicant or licensee may submit a written request to the Board appealing the agency's determination requiring an increased bond, letter of credit or cash deposit amount.

(2) A licensee required to file a bond, letter of credit or cash deposit of up to five times the normal amount may petition the agency to be relieved of that obligation after demonstrating to the agency two full years of acceptable business practices while having posted the increased bond, letter of credit or cash deposit.

(3) Petitions for return to normal bond, letter of credit or cash deposit requirements under ORS 701.085 (2005), 701.068 or 701.088 must be made in writing and delivered to the agency. Such petitions must provide a full explanation why the licensee no longer poses an increased risk to the public and should be granted a license at the regular bond, letter of credit or cash deposit amount.

(4) The agency shall consider the following factors while considering the licensee's petition:

(a) After the increased bond, letter of credit or cash deposit requirement, whether the petitioner has:

(A) A history of paying Dispute Resolution Services complaints within ten (10) days of the order becoming final; or

(B) Incurred any unpaid court judgments;

(b) A review of the petitioner's CCB enforcement/discipline history; and

(c) A criminal history background check.

(5) The agency shall notify the licensee or applicant in writing within 30 days of the agency's decision regarding the petition. If the agency proposes to deny the petition, the agency shall notify the licensee or applicant of the basis for its proposed denial and provide notice and an opportunity for hearing, as provided for in ORS 183.415.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.085 (2005), 701.068, 701.088
Hist.: CCB 9-2006, f. & cert. ef. 9-5-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-006-0100
Responsible Managing Individual

(1) As used in these rules, a responsible managing individual (RMI) has that meaning as provided in ORS 701.005(15).

(2) Upon initial application, an applicant for a contractor's license shall designate at least one individual as the applicant's RMI and;

(a) Provide evidence that the applicant's RMI has completed the training and passed the test, as provided for in ORS 701.122, OAR 812-006-0150 and 812-006-0300; or

(b) Document that the applicant's RMI has experience as required by OAR 812-006-0450.

(3) An individual who is not an owner may not be designated as the RMI of more than one licensee.

(4) When an RMI leaves a business, the business shall:

(a) Immediately appoint another RMI; and

(b) Immediately notify the agency in writing of the name of the individual and the date the individual joined the business.

(5) An RMI appointed under section (4) of this rule must:

(a) Document completion of the training and testing requirements under ORS 701.122, OAR 812-006-0150 and 812-006-0300; or

(b) Document that the RMI has experience as required by OAR 812-006-0450.

Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.005, 701.091 & 701.122
Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; Renumbered from 812-006-0011, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-006-0150
Training Requirements

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

(2) Training shall consist of 16 hours.

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

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

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

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

Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.122
Hist.: CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-006-0200
Training Provider Approval

(1) No training shall meet the requirements of ORS 701.122 unless it is offered by a provider approved by the agency.

(2) To receive agency approval, individuals and organizations shall make application and sign an agreement with the agency prior to offering the training.

(3) The provider application shall include, but will not be limited to, provisions for:

(a) Recording the name, address, contact information, and name of responsible administrator of the provider.

(b) Submitting trainer resumes or work summaries that demonstrate that all its trainers have at least two years experience either teaching adults or working in subject areas outlined in the Oregon Contractors Reference Manual.

(4) No provider may offer or provide any training until there is a fully executed agreement between the provider and the agency.

(5) A provider must comply at all times with the following requirements:

(a) The provider will provide 16-hours of training under OAR 812-006-0150.

(b) The provider will verify that each student taking the training has a current agency-approved manual.

(c) The provider will use agency-approved curriculum and the agency-approved training manual.

(d) The provider will send electronic records of completion to the agency in a format approved by the agency and keep records of completion for a minimum of five years.

(e) The provider will communicate law changes and program procedural changes received from the agency to the provider's trainers and will implement these changes within 30 business days.

(f) The provider will use only approved trainers who have at least two years' total experience either teaching adults or working in the trainer's subject area or a combination of the two.

(g) The provider will request and receive, in writing, agency approval of all trainers at least 10 business days before trainers are scheduled to teach.

(h) The provider will provide a mechanism for students to contact their trainer(s) outside of class for a minimum of one hour per week for 90 days from date of enrollment.

(i) The provider will give all students information about how to contact trainers and hours of availability before the end of the training.

(j) The provider will comply with all applicable federal and state laws.

(6) The agency may publicize a provider's test passage rate for its students.

(7) The agency may revoke a provider's right to offer training and terminate the agreement of a provider at any time the provider fails to:

(a) Meet any requirement of the agreement; or

(b) Comply with these rules.

(8) The agency may revoke a provider's right to offer training and terminate the agreement of a provider:

(a) Whose students do not pass the agency test on their first attempt at least 70 percent of the time after the provider has provided training for at least three months, or whose students fail to maintain the 70 percent first attempt test passing rate during the remaining period of the agreement; or

(b) Who acquires or attempts to acquire agency test questions by unauthorized means, including but not limited to, photographing, photocopying or videotaping any part of the agency's test or paying or offering incentives to individuals or business entities to write down, photograph or videotape any part of the agency's test.

Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.122
Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 4-2000, f. & cert. ef. 5-2-00; 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 4-2003, f. & cert. ef. 6-3-03; CCB 1-2005(Temp), f. & cert. ef. 1-5-05 thru 7-1-05; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-06; Renumbered from 812-006-0030, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-006-0250
Training Subjects

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

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

(a) Construction Contractors Board:

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

(B) Dispute resolution processes;

(C) Business entities;

(D) Mandatory consumer notices;

(E) Rights and responsibilities of consumers and contractors;

(F) Address change notification;

(G) Enforcement program; and

(H) Statutes and rules that govern contractors.

(b) Employer requirements and employee's rights:

(A) State agencies that regulate workplace issues;

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

(C) Civil rights;

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

(E) Current minimum wage rate requirements;

(F) Prevailing wage rate law; and

(G) Employees and independent contractors.

(c) Taxes, record keeping and business practices:

(A) Required employment forms;

(B) Identification numbers;

(C) Cost of employees;

(D) Importance of good record keeping;

(E) Ways to organize records;

(F) Required tax forms and reporting times;

(G) Professional help;

(H) Profit and cash flow; and

(I) Requirements for business licenses.

(d) Building codes:

(A) Applicable codes;

(B) Building codes books;

(C) Code revisions;

(D) Specialty licenses and inspections;

(E) Required and exempt permit work;

(F) Permit applications permit violation penalties;

(G) Required inspections;

(H) Inspection procedures;

(I) Final inspections and occupancy permits; and

(J) Red tag/stop work orders.

(e) Oregon Occupational Safety and Health Division:

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

(B) Equipment basics and maintenance;

(C) Job site record keeping;

(D) General safety practices; and

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

(f) Sound environmental practices and laws:

(A) Environmental friendly materials;

(B) Good recycling, reduction and reuse methods;

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

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

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

(F) Environmental violation penalties;

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

(H) Soil erosion; and

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

(g) Contract law:

(A) Clear and concise contracts;

(B) Four elements of contract law;

(C) Three elements of a construction contract;

(D) Breach of contract;

(E) Minor and major breach of contract;

(F) Written and verbal contracts and change orders;

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

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

(I) Buyer's Right to Cancel.

(h) Oregon construction lien law:

(A) Purpose;

(B) Required notices;

(C) Lien law procedures;

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

(E) Important lien law differences of other states.

(i) Project management, estimating and scheduling:

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

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

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.122
Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 3-1997, f. & cert. ef. 10-3-97; CCB 3-1998, f. & cert. ef. 2-26-98; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; Renumbered from 812-006-0050, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-006-0300
Testing Requirements

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

(2) A person seeking to take the test shall:

(a) Pay any fees required by the test administrator;

(b) Provide approved government-issued picture identification to the test administrator;

(c) Pay for the authorized interpreter needed to take the test; and

(d) Complete the test within a time limit approved by the agency.

(3) A person taking the test shall be allowed to use an Oregon Contractor's Reference Manual and one language translation book during the test.

(4) A person taking the test shall not:

(a) Retake the same version of the test on consecutive attempts.

(b) Be accompanied by anyone while taking the test, except a state-certified interpreter.

(5) After the test is completed, a person shall not review the test questions or answers.

(6) There are no reciprocal agreements with other states or organizations that test contractors.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.122
Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 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 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-06; Renumbered from 812-006-0012, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 2-2007, f. & cert. ef. 3-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-006-0350
Testing Subversion

(1) Testing subversion is the use of any means to alter the results of a test to cause the results to inaccurately represent the competency of an examinee. Testing subversion includes, but is not limited to:

(a) Communication between examinees inside the testing room;

(b) Giving or receiving any unauthorized assistance on the test while the test is in process;

(c) Having any printed or written matter or other devices in the examinee's possession during the test except:

(A) The Oregon Construction Contractor's Reference Manual; and

(B) One language translation book.

(d) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured test questions or other secured examination material prior to, during or after the administration of the examination;

(e) Copying another examinee's answers or looking at another examinee's materials while a test is in process;

(f) Permitting anyone to copy answers to the test;

(g) Copying or removing any test questions from the testing area;

(h) Allowing another person to take the test in the examinee's place;

(i) Writing notes or questions in the Oregon Construction Contractor's Reference Manual or language translation book during the test; or

(j) Leaving the room during the test.

(2) At the discretion of the agency or its designees, if there is evidence of testing subversion by an examinee prior to, during, or after the administration of the test, one or more of the following may occur:

(a) The examinee may be denied the privilege of taking the test if testing subversion is detected before the administration of the test;

(b) If the testing subversion detected has not yet compromised the integrity of the test, such steps as are necessary to prevent further testing subversion shall be taken, and the examinee may be permitted to continue with the test;

(c) The examinee may be requested to leave the testing facility if testing subversion is detected during the test. If the examinee does not leave the facility, the examinee will be deemed a trespasser;

(d) The examinee's test results may be invalidated and the application fee forfeited; or

(e) The examinee may not be allowed to sit for an examination for up to one year.

(3) If testing subversion is detected after the administration of the test, the agency or its designee shall make appropriate inquiry to determine the facts concerning the testing subversion and the agency or its designee may take any of the actions described in this rule.

Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.122
Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-06; Renumbered from 812-006-0015, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-006-0400
Training and Testing Period

(1) For training and testing completed on or after October 1, 2006, the training and testing required under ORS 701.122(1) and (3) shall be valid for 24 months from the date the training was completed. Training and testing that is past the 24-month period from the date of the completed training will not be considered for the purposes of fulfilling the requirements set forth in ORS 701.091.

(2) In lieu of complying with section (1) of this rule, an RMI may satisfy the requirements of ORS 701.091 provided that the RMI:

(a) Has completed the training and passed the test;

(b) Has been the RMI of a licensee within two years of the date of application by the new applicant; and

(c) The license of the licensee that was previously owned by or that previously employed the RMI has not lapsed or, if lapsed, has lapsed for not more than 24 months.

(3) Sections (1) and (2) of this rule do not apply to an RMI that meets the experience requirements under 812-006-0450.

Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.122
Hist.: CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 11-2006(Temp), f. & cert. ef. 11-6-06 thru 5-4-07; CCB 2-2007, f. & cert. ef. 3-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0020
Amendment to Statement of Damages

(1) If the agency refers a complaint to the Office of Administrative Hearings for a hearing on the amount the respondent owes the complainant, the complainant may amend the amount the complainant alleges the respondent owes the complainant by filing an amended statement of damages. An amended statement of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and OAR 812-009-0085. An amended statement of damages filed under this section must be received by the administrative law judge or the Office of Administrative Hearings no later than 14 days before the scheduled date of a hearing on the matter.

(2) An amended statement of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended statement of damages must state the amount alleged to be owed by the respondent, limited to items of complaint in the Breach of Contract Complaint and complaint items added up to and through the initial on-site meeting. The amended statement of damages must be signed by the complainant.

(3) An amended statement of damages making a significant change in the amount the complainant alleges that the respondent owes the complainant may be good cause to postpone the scheduled hearing under OAR 137-003-0525 if the time left before the hearing is insufficient to prepare for a hearing on the amended amount.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8
Stats. Implemented: ORS 183.413, 183.415 & 701.145
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; 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 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0050
Providing Required Information to Parties

The agency delegates to the Office of Administrative Hearings or the administrative law judge assigned to hear a complaint the responsibility to provide the information required to be given to each party under ORS 183.413(2) and OAR 137-003-0510(1)..

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sec. 8
Stats. Implemented: ORS 183.413, 183.415, 701.133 & 701.145
Hist.: 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 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0070
Suspending Processing

(1) An administrative law judge may suspend or cancel a hearing at any time if the administrative law judge finds that the nature or complexity of the issues is such that a court is a more appropriate forum for adjudication. If an administrative law judge suspends or cancels a hearing under this rule, the administrative law judge must refer the complaint to the agency with a memorandum recommending that processing of the complaint be suspended under ORS 701.145 and OAR 812-004-0520 and stating the basis of the recommendation. A copy of this memorandum must be served on the parties.

(2) If a complaint is referred to the agency under section (1) of this rule, the agency may:

(a) Suspend processing the complaint; or

(b) Refer the complaint back to the administrative law judge with instructions to resume the hearing.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.133 & 701.145
Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0090
Discovery and Subpoenas

(1) The agency delegates to the administrative law judge assigned to hear a complaint the authority to:

(a) Order and control discovery under OAR 137-003-0570 related to the hearing on the complaint, except an administrative law judge may not authorize a party to take a deposition that must be paid for by the agency.

(b) Issue subpoenas under OAR 137-003-0585 that are related to the hearing on the complaint.

(2) The agency waives receipt of notice that a party seeks to take the testimony of a witness by deposition under OAR 137-003-0570.

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.425, 183.440, 183.445, 183.450, 701.145, 701.149
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 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0140
Failure to Appear

(1) "Order" as used in this rule means a proposed and final order an administrative law judge is authorized to issue under OAR 812-009-0160 or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) If the administrative law judge notified the parties to a complaint of the time and place of a hearing on the complaint and a party did not appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3).

(3) If a complainant does not appear at a hearing, an administrative law judge may dismiss a complaint under section (2) of this rule if the administrative law judge finds that the record does not contain sufficient evidence to support the complaint.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8
Stats. Implemented: ORS 183.415, 183.417, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.149
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; 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 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; 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 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0160
Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) Subject to sections (7) and (8) of this rule, if a complaint is referred for a hearing to determine the amount, if any, that a respondent owes a complainant, the administrative law judge may not issue an order in an amount greater than the total amount the complainant alleges the respondent owes the complainant in:

(a) The most recent statement of damages or amended statement of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The Breach of Contract Complaint filed under OAR 812-004-0340, if no statement of damages was filed.

(3) If a complaint is referred for a hearing to determine whether any portion of a judgment is within the agency's jurisdiction, the administrative law judge may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the complainant or dismiss the complaint.

(5) An administrative law judge must consider any amounts due to the respondent from the complainant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in section (8) of this rule and OAR 812-009-0200, an administrative law judge must issue a proposed and final order under OAR 137-003-0645(4) that must automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 812-009-0400;

(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR 137-003-0655(1);

(c) The administrative law judge withdraws and corrects the order under OAR 137-003-0655(1);

(d) The agency issues an amended proposed order under OAR 137-003-0655(3); or

(e) The agency notifies the parties and the administrative law judge that the agency will issue the final order.

(7) If a limitation on damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(8) If a limitation of damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that does not include a request for an award of the complaint processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the complaint processing fee paid by the complainant under OAR 812-004-0110 and 812-004-0400.

(9) If a complaint is referred for a hearing solely to determine if the Board has jurisdiction over the complaint and the administrative law judge finds that the Board has jurisdiction over the complaint, the administrative law judge must issue an intermediate order that the Board resume processing the complaint. The Board may accept the order to resume processing or issue a proposed and final order under OAR 137-003-0060 to dismiss the complaint for lack of jurisdiction.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183.415. 183.450, 183.460, 183.464, 183.470, 701.145 & 701.146
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; 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 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04; 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 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0200
Final Order Without a Proposed Order

(1) Notwithstanding OAR 812-009-0160(6), an administrative law judge must issue a final order under OAR 137-003-0665 in a contested case without issuing a proposed order if:

(a) The total amount alleged to be due to any complainant in a hearing does not exceed $2,500;

(b) The parties voluntarily agree to a settlement of a complaint in accordance with ORS 183.417(11), except as provided in section (2) of this rule; or

(c) The hearing was requested by the respondent after the parties voluntarily agreed to a settlement of a complaint and the following conditions exist:

(A) The settlement's essential terms are limited to the respondent's agreement to pay money to the complainant in exchange for the complainant's release of the complaint; and

(B) The amount of the final order does not exceed the amount the respondent agreed to pay under the settlement agreement.

(2) If the parties voluntarily agree to a settlement of a complaint in accordance with ORS 183.417(11) and the settlement agreement includes an agreement for future performance, the administrative law judge must issue an intermediate order containing any necessary findings of fact and return the complaint to the agency for further processing and issuance of the final order.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & 1999 OL, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.415, 183.417, 183.450, 183.460, 183.464, 183.470 & 701.145
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; 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 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0220
Petition for Reconsideration or Rehearing; Request for Stay

A petition for reconsideration or rehearing under OAR 137-003-0675 or a request for a stay under OAR 137-003-0690 of a final order on a complaint issued by an administrative law judge under this division must be filed with the agency.

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.482, 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 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0320
Entry of Agency Evidence

Contested case enforcement hearings may be held before an administrative law judge. The agency's evidence may be entered into the record by the administrative law judge, or by another representative of the agency.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.133 & 701.145
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; 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 7-2003, f. & cert. ef. 8-8-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0340
Agency Representation by Officer or Employee

(1) As authorized by the Attorney General as provided in ORS 183.452, agency officers and employees may appear, but not make legal argument, on behalf of the agency in compliance hearings involving:

(a) Imposition of civil penalties; and

(b) Refusals to reissue and suspensions in the following classes of hearings:

(A) Failure of a licensee to pay a final order of the Board;

(B) Violations of employer status regulations, including violations of ORS chapters 656, 657, and 316, in accordance with ORS 701.106; and

(c) Other compliance and claims hearings as approved in writing by the Attorney General on an individual case basis.

(2) Legal argument as used in ORS 183.457 has the same meaning as in OAR 137-003-0008.

Stat. Auth.: ORS 183.310 - 183.550, 670.310 & 701.235
Stats. Implemented: ORS 183.452 & 183.457
Hist.: BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 812-001-0006, 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-009-0430
Form of Exceptions to Agency Order in a Complaint

(1) Exceptions to an agency order filed by a party to a complaint under OAR 812-009-0400 or a respondent under 812-009-0420 must conform to the following requirements:

(a) Exceptions must be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions must be titled "Exceptions to Proposed Order." If the exceptions are filed in a complaint, the first page must show the file number, the names of the parties to the complaint and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page must show the name of the respondent at the top of the page.

(c) Each page of the exceptions must be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information must be included in the exceptions:

(A) The pages on which the finding of fact appear and the number, if any, of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the finding of fact is not supported by the evidence in the record.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information must be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information must be included in the exceptions:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony must be included in the exceptions.

(h) The party submitting the exceptions must sign and date the exceptions.

(2) The Appeal Committee may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183, 701.145 & 701.260
Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2003, f. & cert. ef. 8-8-03; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0020
Applicability of Rules; Application of ORS 36.600–36.740

(1) The rules in division 10 of this chapter apply when:

(a) A complaint is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely complaint is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board must arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 10 of this chapter, an arbitration conducted under this division is governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 36.600 - 36.740, 183, 701.133, 701.139 & 701.148
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0060
Appointment of Arbitrator

Assignment of arbitrator shall be as provided in ORS 701.149 and shall be subject to a request for a different administrative law judge to act as arbitrator under ORS 183.645 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310, 701.148 & 701.235
Stats. Implemented: ORS 183.645, 701.148 & 701.149
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0080
Delegation of Duties

If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the duties of the agency under these rules may be carried out through representatives as directed by the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge, except that the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may not perform the duties of the agency under OAR 812-010-0040, 812-010-0100 or 812-010-0470.

Stat. Auth.: 670.310, 701.148 & 701.235
Stats. Implemented: ORS 701.148 & 701.149
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0090
Request for Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings receives a request under OAR 812-004-0590 to conduct the hearing on a complaint as a contested case, the Office of Administrative Hearings must retain jurisdiction over the complaint. The Office of Administrative Hearings must hold the contested case hearing at the time scheduled for the arbitration unless good cause exists to reschedule the hearing date and time.

(2) If the Office of Administrative Hearings receives notice under OAR 812-004-0590 that a party to the complaint filed a court complaint and OAR 812-004-0590 requires that the complaint be decided in court, the Office of Administrative Hearings must return the complaint to the agency.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 183, 701.145 & 701.146
Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0100
On-Site Investigation, Settlement Discussions

(1) At the discretion of the agency, arbitration may be preceded by an on-site investigation or settlement discussions.

(2) At the discretion of the arbitrator, the arbitration may be preceded by settlement discussions.

(3) The arbitrator may request that the agency conduct an on-site investigation before arbitration. The agency may grant or deny the request at its discretion.

(4) If the parties to an arbitration settle a complaint referred to arbitration under OAR 812-004-0560, the parties may agree that the arbitrator may issue a final order under ORS 183.417(11).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0120
Time and Place of Arbitration Hearing; Notice

The Office of Administrative Hearings must fix a time and place for the arbitration hearing. The Office of Administrative Hearings must mail notice of the time and place of the arbitration at least 21 days before the arbitration, unless otherwise agreed to by the parties.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.148 & 701.149
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; 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 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0160
Substitution of Arbitrator

(1) The agency administrator or a person designated by the agency administrator may substitute another arbitrator at any time before the arbitration hearing begins.

(2) If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may substitute another arbitrator at any time before the arbitration hearing begins.

Stat. Auth.: ORS 670.310, 701.148 & 701.235
Stats. Implemented: ORS 701.148 & 701.149
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0400
Service of Notices and Other Communications

(1) Communication including, but not limited to the initial notice of an arbitration hearing directed by the arbitrator, Office of Administrative Hearings, or agency to the last-known address of record shall be considered delivered when deposited in the United States mail.

(2) If the agency did not serve a contested case notice, referral to the Office of Administrative Hearings or other notice of the dispute by registered, certified or post office receipt secured mail prior to the initial notice of the arbitration hearing, the notice of hearing shall be sent by registered, certified or post office receipt secured mail.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.117, 701.133 & 701.148
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0420
Time, Form, and Scope of Award; Limitation on Award

(1) An award must be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award must be in writing and must be signed or otherwise authenticated by the arbitrator.

(4) The award must fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award must contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition to modify or correct the award would be appropriate.

(5) An arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent statement of damages or amended statement of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Breach of Contract Complaint filed by the party under OAR 812-004-0340, if no statement of damages was filed.

(6) When a complainant makes a complaint against a respondent's surety bond, letter of credit or cash deposit required under ORS 701.085 (2005) or 701.068 or 701.088 and the parties to the complaint have not agreed that the arbitration will bind the complainant, only the complainant may assert damages. The arbitrator may award damages to the complainant, but not to the respondent. The respondent may assert amounts owed to it as an offset under section (7) of this rule.

(7) An arbitrator must consider any amounts owed by a party alleging damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party alleging the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a statement of damages as to the offset. If the party asserting the offset did not file a statement of damages, the amount of the offset may not exceed the amount of the award.

(8) After an award has been issued, a party to the arbitration may:

(a) File a request to modify or correct the award under ORS 36.690.

(b) File the award with the court with a petition to confirm the award under ORS 36.700.

(c) File a petition with the court to vacate, modify or correct the award under ORS 36.705 and 36.710.

(9)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a complaint or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond, letter of credit or cash deposit required under ORS 701.085 (2005) or 701.068 or 701.088 and other amounts that are not payable from the bond, letter of credit or cash deposit under OAR 812-004-0250 or any other law, the award must segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract at issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

(10) If a limitation on damages under section (4) is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

Stat. Auth.: ORS 183.310 to 183.500, 670.310 & 701.235
Stats. Implemented: ORS 36.690, 36.700, 36.705, 36.710, 701.088, 701.145, 701.148
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 10-2002, f. & cert. ef. 11-20-02; 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 2-2005, f. 6-29-05, cert. ef. 7-1-05; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0425
Petition to Modify or Correct an Award

(1) A party to arbitration or the agency may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 812-010-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator no later than 21 days after the proposed award was mailed to the parties.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator must mail copies of the petition to the other parties to the arbitration and to the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension. If the arbitrator waives or extends the time limitations in sections (3) and (5), the arbitrator must notify the agency of the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a complaint not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the complaints submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the complaints submitted;

(d) Because the arbitrator has not made a final and definite award upon a complaint submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator must consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator must issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) If the arbitrator who prepared the award is not available to consider a petition modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235
Stats. Implemented: ORS 183.482 & 701.148
Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; 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 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-010-0470
Payments from Licensee's Bond, Letter of Credit or Cash Deposit

(1) If an award or amended award requires payment by a licensee and the licensee does not pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond, letter of credit or cash deposit to the extent payment is authorized under ORS 701.150. Payment from the bond, letter of credit or cash deposit is subject to the laws in ORS chapter 701 and rules in division 4 of this chapter, including but not limited to OAR 812-004-0600.

(2) For purposes of OAR 812-004-0600, an award or amended award is ready for payment by a party ordered to pay damages if 21 days have elapsed after the award was issued, and:

(a) The arbitrator has not received a petition to modify or correct the award; and

(b) The agency has not received a copy of a petition to modify, correct or vacate the award filed with the circuit court.

Stat. Auth.: ORS 183.310 -183.500, 670.310 & 701.235
Stats. Implemented: ORS 701.143, 701.088 & 701.150
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; 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 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05, Renumbered from 812-010-0440; 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 9-2008, f. 6-11-08, cert. ef. 7-1-08

812-012-0110
Terms of Written Contract

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

(a) A statement that the contractor is licensed by the Construction Contractors Board.

(b) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(c) Effective July 1, 2008, an acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(d) A summary of the notices required under ORS 87.093, 701.330 or under rules adopted under ORS 701.335(2).

(e) Effective July 1, 2008, acknowledgment of the receipt of the maintenance information required by the board under ORS 701.335;

(f) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

(g) Customer's name and address;

(h) Address where the work is to be performed;

(i) A description of the work to be performed;

(j) Price and payment terms;

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335
Stats. Implemented: ORS 701.305, 701.330 & 701.335
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08

Department of Agriculture
Chapter 603

Rule Caption: Require bulls entering Oregon be tested for Tritrichomonas fetus.
Adm. Order No.: DOA 15-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 9-1-08
Notice Publication Date: 4-1-2008
Rules Adopted: 603-011-0615
Rules Amended: 603-011-0610, 603-011-0620
Subject: Our own trichomoniasis case studies have revealed that infected bulls being imported from other states remain a significant threat to Oregon herds for Tritrichomonas fetus infection. Experience also reveals that most bulls over 12 months of age are sexually mature and are capable of contracting and then spreading Tritrichomonas fetus to susceptible female cattle. These rules amend the definition of virgin bull to be 12 months and over. They further require bulls 12 months of age and over be tested negative for Tritrichomonas fetus before they are imported into Oregon.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0610
Definitions

(1) "Bovine trichomoniasis" is a sexually transmitted disease of cattle caused by the parasitic protozoan organism Tritrichomonas fetus.

(2) "The Department" is the Oregon Department of Agriculture (ODA).

(3) "Virgin bull" is a sexually intact male bovine less than 12 months of age that is certified by the owner/manager as having had no potential breeding contact with females.

(4) "Exposed herds" are cattle herds which have had, within twelve months, direct commingling or cross fence contact with test-positive herd during a time of potential breeding activity.

(5) "Permanent Identification" is a steel alphanumeric ear tag provided as official identification to accredited veterinarians, breed registry tattoos, or other means of identification established by the Department after review by the Trichomoniasis Advisory Panel.

(6) "Herd" is a group of cattle managed as a separate unit and not mixed with other cattle under the same ownership.

(7) "Test positive herd" is a defined herd of cattle in which a diagnosis of trichomoniasis has been made by a certified, licensed veterinarian.

(8) "Trich-year" is the period from September 1st to August 31st of any given year.

Stat. Auth.: ORS 591 & 596
Stats. Implemented: ORS 596.392
Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05; DOA 19-2007, f. & cert. ef. 11-28-07; DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08

603-011-0615
Importation Requirements

In addition to an import permit and other disease control requirements, the following requirements must be met regarding bovine trichomoniasis.

(1) Bulls 12 months of age and over shall have all of the following:

(a) Negative trichomoniasis test results within 60 days proceeding entry into Oregon performed by a certified veterinarian and

(b) A Certificate of Veterinary Inspection that states:

(A) The bulls represented on this Certificate of Veterinary Inspection have been tested for and found to be negative for trichomoniasis pursuant to subsection (1)(a) above and have been confined and have not had sexual contact with females since their last negative test; and

(B) Trichomoniasis has not been diagnosed in the herd of origin within the past 24 months.

(2) Any bull originating from a herd in which trichomoniasis has been diagnosed within the past 24 months shall have all of the following:

(a) Three (3) consecutive negative trichomoniasis tests conducted at least seven (7) days apart, but not more than 28 days apart, with the last test conducted within 60 days proceeding entry; and

(b) A Certificate of Veterinary Inspection that states that the requirements, set forth in subsection (2)(a) above, have been met.

(3) All breeding bulls, 12 months of age and over, entering Oregon as part of a herd that has an authorized Out-of-State Grazing permit pursuant to section 603-011-0264, do not require a Certificate of Veterinary Inspection but are required to have one negative trichomoniasis test within

the 12 months proceeding entry. However, all bulls from a herd in which trichomoniasis has been diagnosed within the past 24 months must comply with (2)(a) above to qualify the herd for an Out-of-State Grazing permit. All Out-of-State Grazing permits shall include an attached copy of the test record, that includes the permanent identification number of the bull(s) tested and the name and telephone number of the testing certified veterinarian.

(4) Bulls may be exempt from the trichomoniasis test requirements for entry into Oregon under any one or all of the following conditions:

(a) Used solely for exhibition purposes and remain under confinement at the location of the exhibition without having access to or allowed to commingle with sexually mature female cattle; or

(b) Used solely for artificial insemination using semen extension and preservation protocols that meet Certified Semen Services standards; or

(c) Consigned directly to slaughter without unloading before the arrival at the slaughter plant.

Stat. Auth.: ORS 596
Stats. Implemented:
Hist.: DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08

603-011-0620
Procedures

(1) The Department shall establish a Bovine Trichomoniasis Advisory Panel, whose membership shall be:

(a) Five voting members who are representatives of the cattle industry, recommended by the Animal Health Committee of the Oregon Cattlemen's Association; and

(b) Four non-voting advisory members who are; the OSU Extension Veterinarian, two practicing veterinarians appointed by the Advisory Panel, and one representative of the office of the ODA State Veterinarian.

(2) Duties of the Advisory Board shall be to:

(a) Advise the Department on management of issues related to the program; and

(b) Advise the Department on preferred policies and processes for resolution of disputes related to the program.

(3) Certified veterinarians, as described in 603-011-0630, must report a positive test result of Tritrichomonas fetus to the Department on a form supplied by the Department within 48 hours of determining the result.

(4) In response to a positive bovine trichomoniasis test the Department shall:

(a) Conduct an investigation to identify herds that were potentially exposed to the infected herd.

(b) Require that any further bovine trichomoniasis testing be performed by a certified person, and accept the results of a retest by a certified person, if the original test was performed by a non-certified person; and

(c) Require permanent identification and testing of all bulls, excepting virgin bulls, in the test-positive herd and exposed herds.

(5) All bulls in herds required to be tested must be withdrawn from breeding contact and tested between 10 and 90 days after withdrawal.

(6) All bulls in test-positive herds must each have three consecutive negative test results with each test event separated by at least seven days and no more than 28 days, after initial diagnosis is made. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(8).

(a) Test-positive herds with valid Out-of–State Permit will have all bulls restricted in place until three consecutive negative test results are complete with each test event separated by at least seven days but no more than 28 days. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(8); or

(b) Return all herdmate bulls from Out-of-State Permit affected herds to their state of origin to complete three negative consecutive trichomoniasis tests as described in (6) above. The Department shall release the herdmate bulls from restriction when the State Veterinarian from the state of origin notifies the Department that the required testing is complete. Test-positive bulls shall not return.

(c) Out-of-State Permit herds exposed to trichomoniasis will have all bulls restricted in place until one negative trichomoniasis test is complete. Any cattle determined to be infected will be restricted and the herd status will be changed to an test-positive herd and subject to the requirements of subsection (6)(i) or (ii); or

(d) Return all herdmate bulls to their state of origin to complete one negative trichomoniasis test. The Department shall release the herdmate bulls from restriction when the State Veterinarian from the state of origin notifies the Department that the required testing is complete. Any bull that has a positive test result shall cause the herd to be classified as test-positive and treated as in (6)(i) or (ii).

(7) All bulls from a test-positive herd must be re-tested every trich-year until every remaining bull tests negative during the same test period.

(a) All bulls from a test-positive herd must be re-tested before February 1 of the following year.

(b) All bulls removed or culled from a test-positive herd are to be tested before removal or culling.

(8) Test-positive bulls shall be held under quarantine separate and apart from other cattle or shall comply with one of the following:

(a) Test-positive bulls may be retested and, if found negative on three consecutive tests that are separated by at least seven days, may be considered test-negative and released from quarantine; or

(b) Test-positive bulls moving into feeding channels shall be castrated before moving from the ranch; or

(c) Test-positive bulls moving out of the infected herd into commercial slaughter-marketing channels, including collection points, shall be identified before moving with an "S" brand applied to both sides of the tailhead and shall move only to slaughter under authority of a VS Form 1-27 Permit for Movement of Restricted Animals; or

(d)Test-positive bulls moving out of the infected herd directly to slaughter shall do so with:

(A) A VS Form 1-27 Permit for Movement of Restricted Animals; and

(B) Prior notification of the State Veterinarian; and

(C) Record of their permanent identification on the VS Form 1-27 under which authority they move.

(9) Failure to comply with the above provisions for response to a positive bovine trichomoniasis test shall result in quarantine of all cattle in the non-compliant herd under provisions of ORS 596.392(4).

(10) The Department may waive the mandatory testing and quarantine provisions of this rule if:

(a) The owner or manager demonstrates that a herd program for control of bovine trichomoniasis which the Department determines, after consultation with the Advisory Panel, to be adequate under the circumstances, is in place and operational at time of diagnosis; or

(b) The owners or managers of the test positive herd and of all exposed herds agree to not test, or agree to pursue a control program of their own design, and the Department determines that such action is adequate under the circumstances.

Stat. Auth.: ORS 591 & 596
Stats. Implemented: ORS 596.392
Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05; DOA 19-2007, f. & cert. ef. 11-28-07; DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08

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Department of Agriculture, Oregon Dairy Products Commission
Chapter 617

Rule Caption: Amends Oregon Dairy Products Commission producer assessment rate on milk and cream
Adm. Order No.: ODDC 1-2008
Filed with Sec. of State: 6-6-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 617-010-0045
Subject: The proposed rule amendment will change the producer assessment to 11.25 cents per cwt of milk produced from 10.75 cents per cwt of milk produced. The requested change will provide increased funding for the Oregon Dairy Products Commission.
Rules Coordinator: Pete Kent—(503) 229-5033

617-010-0045
Assessment Rate Established

Any person who is a first purchaser or Producer-Distributor as defined in ORS 576 and this rule, shall deduct and withhold an assessment at the rate of 11.25¢ per cwt for all milk production in Oregon, as of July 1, 2008.

Stat. Auth: ORS 576
Stats. Implemented: ORS 576.305 & 576.325
Hist.: DP 4, f. 8-25-60; DP 6, f. 6-28-63, ef. 7-1-63; DP 9, f. & ef. 7-8-65; DP 10, f. 5-20-68, ef. 6-1-68; DP 15, f. 7-29-71, ef. 7-1-71; DP 1-1979, f. 6-29-79, ef. 7-1-79; DP 3-1984, f. 5-21-84, ef. 6-1-84; DP 1-1990, f. 4-20-90, cert. ef. 5-1-90; DP 1-1997, f. & cert. ef. 9-2-97; ODDC 1-2001, f. 8-27-01, cert. ef. 9-1-01; ODDC 1-2008, f. 6-6-08 cert. ef. 7-1-08

Department of Agriculture,
Oregon Ryegrass Growers Seed Commission
Chapter 657

Rule Caption: Increases the assessment rate for all ryegrass seed grown in Oregon.
Adm. Order No.: RGSC 2-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 657-010-0015
Subject: Increases the assessment for all ryegrass seed grown in Oregon from 10 cents per cwt to 12 cents per cwt, clean seed basis beginning July 1, 2008.
Rules Coordinator: Lisa Ostlund—(503) 364-2944

657-010-0015
Assessments

(1) Any first purchaser shall deduct and withhold an assessment of 12 cents ($.12) per cwt, clean seed basis, from the price paid to the producer thereof, for ryegrass seed grown in Oregon.

(2) All casual sales of ryegrass seed shall be exempt from the assessment.

(3) The assessment shall be levied only against any commodity or mixture which contains more than 50 percent ryegrass seed.

Stat. Auth.: ORS 576.325 - 576.365
Stats. Implemented: ORS 576.325 - 576.365
Hist.: RG 3, f. 7-8-65, ef. 7-15-65; RG 4(Temp), f. 6-5-75, ef. 7-1-75 RG 5, f. 7-7-75, ef. 7-25-75 ; RG 1-1988, f. 6-17-88, cert. ef. 7-1-88; RG 2-1988, f. 10-19-88. cert. ef. 1-1-89; RG 1-1989, f. 6-21-89, cert. ef. 7-1-89; RG 2-1991, f. & cert. ef. 7-9-91; RG 1-1992, f. 6-22-92, cert. ef. 7-1-92; RG 2-1995, f. 9-14-95, cert. ef. 10-1-95; RG 1-1997, f. 6-11-97, cert. ef. 7-1-97; ORGC 1-1998, f. 6-11-98, cert. ef. 7-1-98; ORGC 1-1999, f. 8-19-99, cert. ef. 10-1-99; RGSC 2-2008, f. 6-4-08, cert. ef. 7-1-08

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Department of Consumer and Business Services,
Insurance Division
Chapter 836

Rule Caption: Relating to Licensing Examination Feed Generally and to Renewal of Adjuster and Insurance Consultant Licenses.
Adm. Order No.: ID 7-2008
Filed with Sec. of State: 5-20-2008
Certified to be Effective: 6-2-08
Notice Publication Date: 4-1-2008
Rules Amended: 836-009-0007, 836-071-0130, 836-071-0135, 836-071-0145
Subject: This rulemaking amends rules of the Insurance Division to reduce fees for license examinations and reexaminations for insurance producers, adjusters and insurance consultants, and change the biennial renewal date for individual adjuster and insurance consultant licenses from the anniversary of the license issuance date to the anniversary of the month of the licensee's birth date. Corresponding changes to other rules are made as well.
Rules Coordinator: Sue Munson—(503) 947-7272

836-009-0007
Fees

(1) The following fees apply to certificates of authority:

(a) The fee for application for a certificate of authority to transact insurance as an insurer is $2,500. The fee for application as a domestic insurer must be paid when application for a permit to organize as a domestic insurer is made. Otherwise, the fee must be paid when the application for the certificate is made;

(b) The fee for annual continuation of a certificate of authority issued under subsection (a) of this section is $1,500;

(c) The fee for reinstatement of a certificate of authority is $100.

(2) The fees in this section apply to examinations for licenses for insurance producers, adjusters and insurance consultants. The fees may be charged by the examination vendor under contract with the Department of Consumer and Business Services and are as follows:

(a) Examination fees:

(A) Insurance producer, property and casualty insurance or life and health insurance — $65;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — $55;

(C) Surplus lines licensee — $55;

(D) Adjuster, general lines insurance or life and health insurance — $55;

(E) Adjuster, health insurance or any single other line designated by rule — $55;

(F) Consultant, life and health insurance or general lines insurance — $55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — $55;

(b) Reexamination fees, to be charged when the applicant retakes an examination:

(A) Insurance producer, property and casualty insurance or life and health insurance — $65;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — $55;

(C) Surplus lines licensee — $55;

(D) Adjuster, general lines insurance or life and health insurance — $55;

(E) Adjuster, health insurance or any single other line designated by rule — $55;

(F) Consultant, life and health insurance or general lines insurance — $55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — $55;

(c) For purposes of the fees charged under subsections (a) and (b) of this section:

(A) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line; and

(B) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who holds a license that is endorsed to transact casualty insurance need not obtain a separate endorsement to transact personal lines insurance.

(3) The following fees apply to application for licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — $30;

(b) Nonresident insurance producer — $30;

(c) Adjuster — $30;

(d) Insurance consultant — $30.

(4) The following fees apply to issuance of licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — $45;

(b) Nonresident insurance producer — $45;

(c) Adjuster — $45;

(d) Insurance consultant — $45.

(5) The examination fee under section (2) of this rule must be paid to the examination vendor. The application fee under section (3) of this rule and the license issuance fee under section (4) of this rule must be paid at the same time. There is no refund of the application and examination fees. Refund of the license issuance fee is governed by section (14) of this rule.

(6) The fees established in this section apply to the renewal of licenses for insurance producers, adjusters and insurance consultants. A license shall expire on the last day of the month in which the second anniversary of the initial issuance date occurs, and on the second anniversary following each renewal thereafter. The fees are as follows:

(a) Resident insurance producer — $45;

(b) Nonresident insurance producer — $45;

(c) Adjuster — $45;

(d) Insurance consultant — $45.

(7) The applicable fee under sections (3) and (4) of this rule shall be paid for each category of insurance business appearing on a license.

(8) The following fees apply to certificates of registration for legal expense organizations:

(a) Application for a certificate of registration — $350;

(b) Renewal of certificate of registration — $350. The fee under this subsection shall be paid annually.

(9) Annual registration of a foreign risk retention group — $350. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(10) Annual registration of a purchasing group — $100. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(11) The license for a rating organization — $180. The fee under this section shall be paid at the time of initial licensing and triennially thereafter.

(12) The fee for filing a statement by an acquiring party under ORS 732.521 for the purpose of acquiring a controlling interest in an insurer (a "Form A" filing as prescribed in OAR 836-027-0100) is $50 per hour of Division staff time spent on reviewing the statement, with a minimum fee of $5,000.

(13) The Fire Marshal shall pay $50,000 each year for services provided by the Department in the collection of gross premium taxes on insurance covering the peril of fire under ORS 731.820.

(14) Fees paid as required under this rule are not refundable except as provided in this section. If the Director determines that an amount paid exceeds the amount legally due and payable to the Department and the amount of the overpayment is less than $20, the Department shall refund the amount only upon receipt of a written request from the payer or the representative of the payer. A fee paid for a license under section (4) of this rule is refundable if the license applicant fails the examination or if the license is otherwise not issued to the applicant.

(15) The amendments to section (2)(a), (b) and (d) of this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002, are re-adopted with the operative date of July 1, 2002, and those same amendments to section (2)(a) and (b) of this rule are repealed effective July 1, 2003.

Stat. Auth.: ORS 293.445, 731.244, 731.804 & 744.037
Stats. Implemented: ORS 731.804, 744.001, 744.002, 744.004, 744.007, 744.058, 744.062, 744.063, 744.064, 744.072, 744.528, 744.531, 744.535, 744.619 & 744.621
Hist.: ID 6-1989(Temp), f. & cert. ef. 7-3-89; ID 14-1989, f. 12-12-89, cert. ef. 1-1-90; ID 21-1990, f. & cert. ef. 12-18-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-1991, f. & cert. ef. 10-21-91; ID 7-1993, f. & cert. ef. 9-3-93; ID 16-1997, f. 11-25-97, cert. ef. 1-1-98; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 14-2000, f. 12-27-00, cert. ef. 1-1-01; ID 13-2001, f. 11-16-01, cert. ef. 1-1-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08

836-071-0130
Adjuster or Insurance Consultant License Renewal

(1) The adjuster or insurance consultant license of an individual expires biennially in the month of the individual's birthday anniversary. The adjuster or insurance consultant license of a person other than an individual expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the license of a person other than an individual shall expire on the second anniversary following each renewal.

(2) An adjuster or insurance consultant licensee applying for renewal must do the following, as applicable:

(a) Submit a completed renewal application, on a form provided by the Director. If mailed, the renewal application must be postmarked by the United States Postal Service not later than the license expiration date;

(b) Submit the renewal fee; and

(c) Submit a statement of current license status from the insurance department of the state of residence of the licensee, if the licensee is a nonresident licensee.

(3) The Director may allow an adjuster or insurance consultant licensee not more than 30 days to submit missing information on the application form if the fees have been submitted on or before the expiration date.

(4) The Director may request on the renewal application any information requested on the original application for a license.

(5) For the purpose of making the transition to renewal according to birth date month as provided in this rule, the adjuster or insurance consultant license of an individual that would have expired on or after November 27, 2007 according to this rule as the rule read prior to November 27, 2007 expires instead in the birth date month next following the former expiration date.

Stat. Auth.: ORS 731.244 & 744.007
Stats. Implemented: ORS 744.007
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 9-2002, f. & cert. ef. 3-18-02; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08

836-071-0135
Renewal of Expired Adjuster or Insurance Consultant License

(1) When an expired licensed of an individual is renewed under ORS 744.009, the renewed license expires biennially in the month of the individual's birthday anniversary.

(2) When an expired license of a person other than an individual is renewed under ORS 744.009, the expiration date of the renewed license shall be the same as the expiration date of the initial license.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 744.009
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 9-2002, f. & cert. ef. 3-18-02; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08

836-071-0145
Amended License Issuance

(1) When the Director determines that an applicant for an amendment to a license satisfies all applicable requirements, the Director shall issue to the applicant a license incorporating the amendment.

(2) A license issued under this rule expires on the same date that the preceding license would have expired, unless OAR 836-071-0130(5) applies to the preceding license.

Stat. Auth.: ORS 731 & 744
Stats. Implemented: 744.007 & 744.009
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08

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

Rule Caption: To allow OMIP to charge interest, fees, and other penalties as approved by the Board for untimely assessment payments.
Adm. Order No.: OMIPB 4-2008(Temp)
Filed with Sec. of State: 6-10-2008
Certified to be Effective: 6-10-08 thru 12-5-08
Notice Publication Date:
Rules Amended: 443-002-0030
Subject: Amend current rule which will allow OMIP to charge interest, fees, and other penalties as approved by the OMIP Board on untimely assessment payments.
Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0030
Assessment for Operating Expenses and Counting Insureds

(1) OMIP shall assess insurers and reinsurers, as defined in ORS 735.605, for the purpose of collecting monies to cover expenses and losses of OMIP in excess of premiums, which are not or will not be sufficiently covered by funds in the OMIP Account defined in ORS 735.612.

(a) Pursuant to ORS 735.614(2), OMIP counts both the number of Oregon insureds and Oregon certificate holders for assessment purpose. Health insurance issued in other states for certificate holders in Oregon shall be subject to the assessment count.

(b) OMIP will assess insurance companies based on the number of persons insured in Oregon. The actual insurance transaction does not have to take place in the State of Oregon for it to be counted.

(c) All insurers that are authorized to transact health or medical insurance in Oregon and that insure persons residing in Oregon will be subject to the assessment. All reinsurers that reinsure medical insurance in Oregon on or after September 27, 1987, will be subject to assessment.

(2) The OMIP Board shall determine the frequency of such assessments based on projected cash balances and operating revenues and expenditures.

(3) The projected cash balance shall take into account a reserve intended to cover claims incurred but not reported or paid. The Board shall review the reserve quarterly to determine its adequacy and adjust it as needed.

(4) The amount for which OMIP assesses each insurer or reinsurer as defined in ORS 735.605 shall depend on each insurer's or reinsurer's proportion of the total of all Oregon insureds and certificate holders insured or reinsured and the amount of funds that OMIP needs to cover projected expenses and losses in excess of the premiums:

(a) Annually, OMIP will send a request to all insurers insuring or reinsuring health or medical insurance in Oregon to report the number of persons insured or reinsured in Oregon as of March 31 of the current year.

(A) The insurer or reinsurer will have 30 days from the date of the request to return the requested count.

(B) Based on the information obtained in the requested count, OMIP will issue bi-annual assessments. Insurers, including reinsurers, will have 30 days from the notice of assessment to make payment. Effective May 1st of 2006, if the insurer does not make payment in full to OMIP within 30

days from the notice of assessment, OMIP may add interest, fees, and other penalties as approved by the Board.

(C) If OMIP discovers that an insurer (including a reinsurer) has inaccurately reported the number of persons insured, OMIP may request that the insurer provide an accurate count and may reassess the insurer accordingly.

(b) OMIP shall determine the total number of Oregon insureds and certificate holders insured or reinsured as follows:

(A) OMIP shall limit the count of insureds and certificate holders insured or reinsured to medical insurance as defined in ORS 735.605(5);

(B) The count shall include all insureds and certificate holders, including dependents, other individuals whose medical insurance coverage is insured or reinsured in whole or in part, and, to the extent permitted by federal law, individuals covered under excess loss coverage written on self-funded medical plans;

(C) Reinsurers may exclude from the number reported those individuals that the other insurers or reinsurers have counted;

(D) The insurers and reinsurers may use any reasonable method of estimating or may use actual counts of the number of individuals for whom coverage is provided. They must inform OMIP how they calculated any estimates.

(5) If assessment collections exceed the amount needed to meet OMIP expenses and losses, OMIP shall hold and invest the excess funds and use the earnings and interest, to offset future net losses or to reduce OMIP premiums. For the purposes of this section, "future net losses" include reserves for incurred-but-not-reported claims.

(6) OMIP allows a three-year look back period for adjusting assessments based on discrepancies reported to determine counts of covered lives. This rule applies retroactively from May of 2006.

(a) If OMIP discovers that a carrier over-reported the number of covered lives during the three-year look back period, OMIP may apply a credit to future assessments if applicable. If the actual count of covered lives drops to zero, OMIP may return the assessment payment to the carrier.

(b) If a carrier under-reported the number of covered lives during the three-year look back period, OMIP may charge the carrier the per member per month amount for each assessment applicable to each year. OMIP may also charge interest from the year of the discrepancy and for each additional year in the amount equivalent to what OMIP most recently earned on its cash account.

Stat. Auth.: ORS 735.610(6) & 735.614
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 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-30-08; OMIPB 3-2008, f. & cert. ef. 4-15-08; OMIPB 4-2008(Temp), f. & cert. ef. 6-10-08 thru 12-5-08

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

Rule Caption: Remove several references to consensus standards that have duplicative/comparable requirements.
Adm. Order No.: OSHA 7-2008
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 5-30-08
Notice Publication Date: 4-1-2008
Rules Amended: 437-002-0005, 437-002-0060, 437-002-0080, 437-002-0100, 437-002-0140, 437-002-0260, 437-002-0280, 437-004-2230
Subject: This rule making is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards. We are removing several references to consensus standards that have requirements that duplicate, or are comparable to, other OR-OSHA rules; this action includes correcting a paragraph citation in one of these rules. We are also removing a reference to American Welding Society standard A3.0-1969 ("Terms and Definitions") in our general industry welding standards. This rulemaking is part of a continuing effort to update references to consensus and industry standards used throughout our rules.

OR-OSHA adopts the changes in general industry as published in the December 14, 2007 Federal Register. A reference to American National Standard Safety Requirements for Explosive-Actuated Fastening Tools, ANSI A10.3-1995 is removed in Division 4/P, Agriculture/Small Tools.
Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0005
Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following Federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/98, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.1, Purpose and scope; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(2) 29 CFR 1910.2, Definitions; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(3) 29 CFR 1910.3, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(4) 29 CFR 1910.4, Amendments to this part; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(5) 29 CFR 1910.5, Applicability of standards; published 6/27/74, Federal Register, vol. 39, no. 125, pp. 23503 23504; amended 6/30/93, FR vol. 58, no. 124, p. 35308.

(6) 29 CFR 1910.6, Incorporation by reference; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23504; amended 2/10/84, FR vol. 49, no. 29, p. 5321; 3/7/96, FR vol. 61, no. 46, p. 9230; 3/23/99, FR vol. 64, no. 55, p. 13908; 9/13/05, FR vol. 70, no. 176, p. 53925; 2/14/07, FR vol. 72, no. 30, p. 7136; 12/14/07, FR vol. 72, no. 240, p. 71061.

(7) 29 CFR 1910.7, Definition and requirements for a Nationally Recognized Testing Laboratory; published 4/12/88, Federal Register, vol. 53, no. 70, pp. 12120-12125; and amended 5/11/88, FR vol. 53, no. 91, p. 16838.

These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: APD 17-1988, f. & ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 4-2005, f. & cert. ef 12-14-05; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08

437-002-0060
Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/96, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.66 Powered Platforms for Building Maintenance, published 6/27/74, Federal Register, vol. 39, no. 125, pp. 23533-23537; amended 10/24/78, FR vol. 43, p. 49746; amended 2/10/84, FR vol. 49, p. 5322; amended 7/28/89, FR vol. 54. no. 144, pp. 31456-31477; 3/7/96, FR vol. 61, no. 46, p. 9235; 2/14/07, FR vol. 72, no. 30, p. 7136.

(2) 29 CFR 1910.67 Vehicle-Mounted Elevating and Rotating Work Platforms, published 6/27/74, FR vol. 39, no. 125, p. 23537; amended 3/26/75, FR vol. 40, p. 13439; amended 8/6/90, FR vol. 55, no. 151, pp. 32016-32020; 3/7/96, FR vol. 61, no. 46, p. 9235.

(3) 29 CFR 1910.68 Manlifts, published 6/27/74, FR vol. 39, no. 125, pp. 23537-23540; amended 10/24/78, FR vol. 43, p. 49746; amended 9/29/86, FR vol. 51, p. 34560; 3/7/96, FR vol. 61, no. 46, p. 9235; 12/14/07, FR vol. 72, no. 240, p. 71061.

These rules are on file with Oregon Occupational Safety and Health Division, Department of Consumer and Business Services and the United States Government Printing Office.
Stat. Auth.: ORS 654.025(2) & 656.726(3)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: APD 4-1990, f. & cert. ef. 1-23-90; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08

437-002-0080
Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/02, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.94 Ventilation, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 24522; 6/9/75, FR vol. 40, p. 24522; 10/24/78, FR vol. 43, p. 49746; 2/10/84, FR vol. 49, p. 5322; 8/6/90, FR vol. 55, no. 151, p. 32015; 6/30/93, FR vol. 58, no. 124, p. 35308; 3/7/96, FR vol. 61, no. 46, p. 9236; 1/8/98, FR vol. 63, no. 5, p. 1269; 3/23/99, FR vol. 64, no. 55, p. 13909; amended with AO 3-2003,

removed (c), and Oregon note added, f. and ef. 4/21/03; 12/14/07, FR vol. 72, no. 240, p. 71061.

(2) 29 CFR 1910.95 Occupational Noise Exposure, published 6/27/74, Federal Register, vol. 30, p. 23502; amended 1/16/81, FR vol. 46, p. 4161; 12/29/81, FR vol. 46, p. 62845; 3/8/83, FR vol. 48, p. 9776; 6/28/83, FR vol. 48, p. 29687; 6/7/89, FR vol. 54, p. 24333; 3/7/96, FR vol. 61, no. 46, p. 9236; 4/3/06, FR vol. 71, no. 63, p. 16669.

NOTE: 29 CFR 1910.96 Ionizing radiation, has been redesignated to 29 CFR 1910.1096.

(3) 29 CFR 1910.97 Nonionizing radiation, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(4) 29 CFR 1910.98 Effective dates, published 6/27/74, Federal Register, vol. 39, p. 23502.

(5) 29 CFR 1910.99 Sources of standards, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 23073; 6/11/82, FR vol. 47, p. 25323; 3/7/96, FR vol. 61, no. 46, p. 9236.

(6) 29 CFR 1910.100 Standards organization, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/18/75, FR vol. 40, p. 18426; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9236.

NOTE: These standards are on file with the Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-1992, f. 2-6-92, cert. ef. 5-1-92; OSHA 4-1993, f. 4-1-93, cert. ef. 5-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 7-2008, f. & cert. ef. 5-30-08

437-002-0100
Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/02, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.101 Compressed gases (General requirements), published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(2) 29 CFR 1910.102 Acetylene, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(3) 29 CFR 1910.103 Hydrogen, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 4/12/88, FR vol. 53, p. 12121; 8/6/90, FR vol. 55, no. 151, p. 32015; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9236; amended 6/8/04, FR vol. 69, p. 31880-31882; 12/14/07, FR vol. 72, no. 240, p. 71061.

(4) 29 CFR 1910.104 Oxygen, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 3/7/96, FR vol. 61, no. 46, p. 9237.

(5) 29 CFR 1910.105 Nitrous oxide, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9237.

(6) 29 CFR 1910.106 Flammable and combustible liquids, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 1/27/75, FR vol. 40, p. 3982; 6/2/75, FR vol. 40, p. 23743; 10/24/78, FR vol. 43, p. 49746; 11/7/78, FR vol. 43, p. 51759; 9/7/82, FR vol. 47, p. 39164; 9/12/86, FR vol. 51, p. 34560; 4/12/88, FR vol. 53, p. 12121; 8/6/90, FR vol. 55, no. 151, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9237; 9/13/05, FR vol. 70, no. 176, p. 53925.

(7) 29 CFR 1910.107 Spray finishing using flammable and combustible materials, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 9/12/80, FR vol. 45, p. 60704; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12121; 3/7/96, FR vol. 61, no. 46, p. 9237; amended with AO 3-2003, removed 1910.107, and Oregon note added, f. and ef. 4/21/03.

(8) 29 CFR 1910.108 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(9) 29 CFR 1910.109 Explosives and blasting agents, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49747; 9/12/80, FR vol. 45, p. 60704; 4/12/88, FR vol. 53, p. 12122; 2/24/92, FR vol. 57, no. 36, p. 6403; 3/29/93, FR vol. 58, no. 58, p. 16496; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9237; 6/18/98, FR vol. 63, no. 117, p. 33466.

(10) 29 CFR 1910.110 Storage and handling of liquefied petroleum gases, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49747; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12122; 6/20/90, FR vol. 55, p. 25094; 8/6/90, FR vol. 55, no. 151, p. 32015; 3/19/93, FR vol. 58, no. 52, p. 15089; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9237; 6/18/98, FR vol. 63, no. 117, p. 33466; 12/14/07, FR vol.72, no. 240, p. 71061.

(11) 29 CFR 1910.111 Storage and handling of anhydrous ammonia, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49748; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12122; 3/7/96, FR vol. 61, no. 46, p. 9238; 1/8/98, FR vol. 63, no. 5, p. 1269; 6/18/98, FR vol. 63, no. 117, p. 33466; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01; 12/14/07, FR vol. 72, no. 240, p. 71061.

(12) Reserved for 29 CFR 1910.112 (Reserved)

(13) Reserved for 29 CFR 1910.113 (Reserved)

(14) 29 CFR 1910.114 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(15) 29 CFR 1910.115 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(16) 29 CFR 1910.116 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(17) 29 CFR 1910.119 Process safety management of highly hazardous chemicals, published 2/24/92, Federal Register, vol. 57, no. 36, pp. 6403-6417; amended 3/4/92, FR vol. 57, no. 43, p. 7847; 6/1/92, FR vol. 57, no. 105, pp. 23060-1. (NOTE: Excepted rules adopted by reference by OR-OSHA by Admin. Order 6-1994 on 9/30/94.) Amended 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(18) 29 CFR 1910.120 Hazardous waste operations and emergency response, Interim Final Rules, published 12/19/86, Federal Register, vol. 51, no. 244, pp. 45663-45675; and amended 5/5/87, FR vol. 52, no. 85, pp. 16241-16243. Final Rules were published 3/6/89, FR vol. 54, no. 42, pp. 9294-9335; amended 4/13/90, FR vol. 55, no. 72, pp. 14072-14075; 4/18/91, FR vol. 56, no. 75, pp. 15832-15833; amended 8/22/94, FR vol. 59, no. 161, pp. 43270-43275; 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01; 4/3/06, FR vol. 71, no. 63, p. 16669.

(19) 29 CFR 1910.121 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(20) 29 CFR 1910.122 Table of contents, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(21) 29 CFR 1910.123 Dipping and coating operations: Coverage and definitions, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(22) 29 CFR 1910.124 General requirements for dipping and coating operations, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909; amended with AO 4-2002, repeal (g)(2), and Oregon note added, f. and ef. 5/30/02. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(23) 29 CFR 1910.125 Additional requirements for dipping and coating operations that use flammable or combustible liquids, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13910. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(24) 29 CFR 1910.126 Additional requirements for special dipping and coating applications, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13911. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

NOTE: These standards are on file with the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 19-1988, f. & ef. 11-17-88; APD 12-1989, f. & ef. 7-14-89; OSHA 22-1990, f. 9-28-90, cert. ef. 10-1-90; OSHA 3-1992, f. & cert. ef. 2-6-92; OSHA 3-1993, f. & cert. ef. 2-23-93; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 4-2002, f. & cert. ef. 5-30-02; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2004, f. & cert. ef. 9-15-04; OSHA 4-2005, f. & cert. ef 12-14-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 9-2007, f. & cert. ef. 12-3-07; OSHA 7-2008, f. & cert. ef. 5-30-08

437-002-0140
Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/98, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.141 Sanitation, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/28/75, FR vol. 40, p. 18446; 5/28/75, FR vol.

40, p. 23073; 10/24/78, FR vol. 43, p. 49748; 6/18/98, FR vol. 63, no. 117, p. 33467.

(2) Reserved for 29 CFR 1910.142 Temporary labor camps.

(3) 29 CFR 1910.143 Nonwater carriage disposal systems (Reserved).

(4) 29 CFR 1910.144 Safety color code for marking physical hazards, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49749; 2/10/84, FR vol. 49, p. 5322; 3/7/96, FR vol. 61, no. 46, p. 9239; 12/14/07, FR vol. 72, no. 240, p. 71061.

(5) 29 CFR 1910.145 Specifications for accident prevention signs and tags, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78; FR vol. 43, p. 49749; 11/7/78, FR vol. 43, p. 51759; 2/10/84, FR vol. 49, p. 5322; 9/19/86, FR vol. 51, p. 33260; 3/7/96, FR vol. 61, no. 46, p. 9239.

(6) 29 CFR 1910.146 Permit-required confined spaces, published 1/14/93, Federal Register, vol. 58, no. 9, pp 4549-4563; corrections published 6/29/93, FR vol. 58, no. 123, p. 34844; amended 5/19/94, FR vol. 59, no. 96, pp. 26411-26116; 12/1/98, FR vol. 63, no. 230, p. 66038; 1/4/99, FR vol. 64, no. 1, p.204.

(7) 29 CFR 1910.147 The control of hazardous energy, (lockout/tagout); published 9/1/89, Federal Register, vol. 54, no. 169. pp. 36687-36696; amended (extension of effective date) 11/6/89, FR vol. 54, no. 213, p. 46610; amended 9/20/90, FR vol. 55, no. 183, pp. 38685-38687; amended with AO 12-2001, add (f)(3), f. and ef. 10/26/01.

(8) 29 CFR 1910.148 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

(9) 29 CFR 1910.149 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

(10) 29 CFR 1910.150 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9239.

NOTE: These federal standards are on file with the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-1990, f. 1-19-90, cert. ef. 3-1-90; OSHA 4-1991, f. 2-25-91, cert. ef. 3-15-91; OSHA 13-1992, f. 12-7-92, cert. ef. 2-1-93; OSHA 8-1993, f. & cert. ef. 7-1-93; OSHA 5-1994, f. & cert. ef. 9-30-94; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 5-1999, f. & cert. ef. 5-26-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 7-2008, f. & cert. ef. 5-30-08

437-002-0260

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/96, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.241 Definitions, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49750.

(2) 29 CFR 1910.242 Hand and portable powered tools and equipment, general, published 6/27/74, Federal Register, vol. 39, p. 23502.

(3) 29 CFR 1910.243 Guarding of portable powered tools, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49750; 2/10/84, FR vol. 49, p. 5323; 2/1/85, FR vol. 50, p. 4649; 3/7/96, FR vol. 61, no. 46, p. 9240; 9/13/05, FR vol. 70, no. 176. p. 53925; 12/14/07, FR vol. 72, no. 240, p. 71061.

(4) 29 CFR 1910.244 Other portable tools and equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 2/10/84, FR vol. 49, p. 5323.

These rules are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 4-2005, f. & cert. ef 12-14-05; OSHA 7-2008, f. & cert. ef. 5-30-08

437-002-0280

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following Federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/97, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.251 Definitions, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/12/88, FR vol. 53, p. 12122; amended 4/11/90, FR vol. 55, no. 70, p. 13696; 3/7/96, FR vol. 61, no. 46, p. 9240; 12/14/07, FR vol. 72, no. 240, p. 71061.

(2) 29 CFR 1910.252 General Requirements, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 23073; 10/24/78, FR vol. 43, p. 49750; 2/10/84, FR vol. 49, p. 5323; 9/29/86, FR vol. 51, p. 34562; 4/11/90, FR vol. 55, no. 70, pp. 13696-13701; 3/7/96, FR vol. 61, no. 46, p. 9240; 1/8/98, FR vol. 63, no. 5, p. 1284.

(3) 29 CFR 1910.253 Oxygen-Fuel Gas Welding and Cutting, published 4/11/90, Federal Register, vol. 55, no. 70, pp. 13701–13709; 3/7/96, FR vol. 61, no. 46, p. 9241; 12/14/07, FR vol. 72, no. 240, p. 71061.

(4) 29 CFR 1910.254 Arc Welding and Cutting, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/28/75, FR vol. 40, p. 18426; 4/11/90, FR vol. 55, no. 70, pp. 13709-13710; 3/7/96, FR vol. 61, no. 46, p. 9241; 9/13/05, FR vol. 70, no. 176, p. 53925.

(5) 29 CFR 1910.255 Resistance Welding, published 4/11/90, Federal Register, vol. 55, no. 70, pp. 13710–13711.

These rules are on file with the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 232-1990, f. 9-28-90, cert. ef. 12-1-90; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 4-2005, f. & cert. ef 12-14-05; OSHA 7-2008, f. & cert. ef. 5-30-08

437-004-2230

Guarding and Operation of Portable Powered Tools

(1) Portable powered tools.

(a) Portable circular saws.

(A) All portable, power-driven circular saws with a blade diameter greater than 2 inches must have guards above and below the base plate or shoe. The upper guard must cover the saw to the depth of the teeth, except for the minimum arc to permit tilting the base for bevel cuts. The lower guard must cover the saw to the depth of the teeth, except for the minimum arc that allows proper retraction and contact with the work. When the tool is taken out of the work, the lower guard must automatically and quickly return to covering position. This does not apply to meat cutting saws.

(B) In addition to the provisions in (1)(a)(A) above, the lower guard must have a lug or lever, remote from the blade teeth, that allows the operator to safely lift the guard for starting unusual cuts.

(b) Switches and controls.

(A) All hand-held powered circular saws with a blade diameter more than 2 inches, electric, hydraulic or pneumatic chain saws and percussion tools without positive accessory holding means must have a constant pressure switch or control that will shut off the power when pressure is released.

(B) The following hand-held powered tools must have a constant pressure control switch. They may have a lock-on control if a single motion of the same finger or fingers that turns it on can turn it off.

(i) Tappers, drills, fastener drivers, horizontal, vertical and angle grinders with wheels more than 2 inches in diameter. Disc sanders with discs more than 2 inches in diameter. Belt sanders, reciprocating saws, saber, scroll and jig saws with blade shanks more than a nominal 1/4-inch and other similarly operating powered tools.

(C) All other hand-held powered tools may have either a positive "on-off" control, or other controls as in (1)(b)(A) and (B) above.

(i) Saber, scroll and jig saws with non-standard blade holders may use blades with shanks which are non-uniform in width, if the narrowest part of the shank is an integral part in mounting the blade.

(ii) Measure the blade shank width at the narrowest part of the blade when saber, scroll and jig saws have non-standard blade holders.

(iii) "Nominal" in this subparagraph means +0.05-inch.

(D) Exclusions. This subparagraph does not apply to concrete vibrators, concrete breakers, powered tampers, jack hammers, garden appliances, household and kitchen appliances, personal care appliances or to fixed machinery.

(c) Power chain saws.

(A) In addition to (1)(b)(A) above, all power chain saws must meet American National Standard B175.1-1991, Safety Code for Power Chain Saws.

(B) Inspect power chain saws daily when in use and always keep them in good repair. Do not use saws with cracked or loose handle bars or defective parts.

(C) Stop power chain saw engines before fueling.

(D) Power chain saws must have a working chain brake if originally equipped with one.

(E) Chain brakes and other safety features must always work correctly.

(F) All hand-held gasoline powered chain saws must have a constant pressure throttle control that will shut off power to the saw chain when the pressure is released.

(G) Employees using chain saws must wear flexible ballistic nylon pads, chaps or other equivalent protection in a manner that protects the legs from the thigh to the top of the boot. Employers must provide and pay for this equipment.

(H) Do not drop-start chain saws or other power saws.

NOTE: Drop-starting saws is permitted outside of the basket of an aerial lift only after ensuring that the area below the aerial lift is clear of people.

(I) The operator must have secure footing when starting the saw.

(J) Start and operate the saw only when all other workers are clear.

(K) Stop the engine when carrying the power saw but not between cuts during consecutive felling, bucking, limbing or cutting operations.

(i) The chain must not be turning and the operator's hand must be off the throttle lever while moving between work locations.

(ii) Carry small chain saws at your side with the bar of the saw pointed to the rear.

(L) Stop the engine for all cleaning, refueling, adjustments, and repairs to the motor.

(d) Portable belt sanders. Belt sanders must have guards at each nip point where the sanding belt runs onto a pulley. These guards must prevent the operator's hands or fingers from contacting the nip points. The unused run of the sanding belt must have guards against accidental contact.

(e) Cracked saws. Do not use cracked saws.

(f) Grounding. Portable electric powered tools must meet the requirements of Subdivision 4/S.

(2) Pneumatic tools and hose.

(a) Only use compressed air supply hose and hose connections rated for the pressure and service required by the tools they serve.

(b) There must be a shut-off valve at the manifold or permanent pipe outlet of the compressed air supply.

(c) Do not couple or uncouple hose without first shutting off the compressed air supply unless the couplers have check valves that automatically shut it off.

(d) Pneumatic fastener-driving tools and other power-driven fastener tools, except as allowed in (e) below, must have a safety device to prevent ejection of nails, staples or fasteners when the tool is not in firm contact with the work.

(e) You may use power-driven fastener-driving tools without the safety device only when using staples with a diameter of .0475-inch (18 gauge A.W.G.) or less and the operator and all workers within 15 feet are wearing suitable eye protection. This does not apply to office staplers.

(f) Do not use oxygen or combustible gases to drive pneumatic tools.

(g) Direct the exhaust from pneumatic power tools away from the operator.

(3) Portable abrasive wheels

(a) Definitions:

(A) Mounted wheels. Mounted wheels of 2-inch diameter or smaller, of various shapes. They may be either organic or inorganic bonded abrasive wheels. They are secured to plain or threaded steel mandrels.

(B) Organic bonded wheels. Organic wheels are wheels bonded by an organic material such as resin, rubber, shellac or other similar bonding agent.

(C) Portable grinding. A grinding operation where the grinding machine is hand-held and may move easily from one location to another.

(D) Reinforced wheels. The term "reinforced" as applied to grinding wheels defines a class of organic wheels that contain strengthening fabric or filament. The term "rein- forced" does not cover wheels using such mechanical additions as steel rings, steel cup backs or wire or tape winding.

(E) Safety guard. A safety guard is an enclosure to restrain the pieces of the grinding wheel if it breaks while in use.

(F) Tuck pointing. Removal, by grinding, of cement, mortar or other non-metallic jointing material.

(G) Tuck pointing wheels. Tuck pointing wheels, Type 1, reinforced organic bonded wheels have diameter, thickness and hole size dimension. They are subject to the same limitations of use and mounting as Type 1 wheels.

(H) Limitation: Wheels used for tuck pointing should be reinforced, organic bonded.

(I) Type 11 flaring cup wheels. Type 11 flaring cup wheels have double diameter dimen- sions D and J, and in addition have thickness, hole size, rim and back thickness dimensions. Grinding is always done on the rim face, W dimension. Type 11 wheels are sub- ject to all limitations of use and mounting listed for Type 6 straight sided cup wheels.

(J) Type 11 Flaring Cup Wheels Figure 1 Side grinding wheel with a wall flared or tapered outward from the back. Wall thickness at the back is normally greater than at the grinding face (W).

(K) Limitation: Minimum back thickness, E dimension, should not be less than one-fourth T dimension. Also, when unthreaded hole wheels are specified the inside flat, K dimension, must be large enough to hold a suitable flange.

(L) Type 6 straight cup wheels. Type 6 cup wheels have diameter, thickness, hole size, rim thickness and back thickness dimensions. Grinding is always done on the rim face, W dimension.

(M) Type 6 Straight Cup Wheels Figure 2 Side grinding wheel with a diameter, thickness and hole with one side straight or flat and the opposite side recessed. This type, differs from Type 5 in that the grinding is on the wall of the abrasive created by the difference between the diameter of the recess and the outside diameter of the wheel. Therefore, the wall dimension "W" takes precedence over the diameter of the recess as an essential intermediate dimension to describe this shape type.

(N) Limitation: Minimum back thickness, E dimension, should not be less than one-fourth T dimension. In addition, when unthreaded hole wheels are specified, the inside flat, K dimension, must be large enough to hold a suitable flange.

(O) Type one straight wheels. Type 1 straight wheels have diameter, thickness and hole size dimensions and should be used only on the periphery. Mount type 1 wheels between flanges. Type 1 Straight Wheels Figure 3 Peripheral grinding wheel with a diameter, thickness and hole. [Figures not included. See ED. NOTE.]

(P) Limitation: Hole dimension (H) should not be greater than two-thirds of wheel diameter dimension (D) for precision, cylindrical, centerless or surface grinding applications. Maximum hole size for all other applications should not exceed one-half wheel diameter.

(b) General requirements. Use abrasive wheels only on machines with safety guards as in OAR 437-004-2230(3)(a) through (d).

(A) Exceptions. The requirements of paragraph OAR 437-004-2230(3)(a) do not apply to the following classes of wheels and conditions.

(i) Wheels for internal work while within the work being ground;

(ii) Mounted wheels, 2 inches and smaller in diameter, used in portable operations (see definition of Mounted Wheel); and

(iii) Types 16, 17, 18, 18R, and 19 cones and plugs and threaded hole pot balls where the work offers protection.)

(iv) A safety guard must cover the spindle end, nut and flange projections. Mount the safety guard so as to maintain proper alignment with the wheel. The strength of the fastenings must exceed the strength of the guard.

(v) Exception. If the work provides a suitable measure of protection to the operator, safety guards may allow exposure to the spindle end, nut and outer flange. Where the work entirely covers the side of the wheel, you may omit the side covers of the guard.

(vi) Exception. On portable machines designed for and used with, type 6, 11, 27, and 28 abrasive wheels, cutting off wheels and tuck pointing wheels, you may leave the spindle end, nut and outer flange exposed.

(b) Cup wheels. Protect cup wheels (Types 6 and 11) by:

(A) Using safety guards in OAR 437-004-2230(3)(a); or,

(B) Using special "revolving cup guards" that mount behind the wheel and turn with it. They must be steel or other material with adequate strength and must enclose the wheel sides upward from the back for one-third of the wheel thickness. The mounting features must conform with all regulations. (See OAR 437-004-2230(3)(e).) Keep a maximum clearance of 1/16-inch between the wheel side and the guard; or,

(C) Using another form of guard that insures protection equal to that provided by the guards in OAR 437-004-2230(3)(a)(A) or (B).

(c) Vertical portable grinders. Safety guards on machines known as right angle head or vertical portable grinders must have a maximum exposure angle of 180 degrees. Place the guard between the operator and the wheel during use. Adjust the guard to deflect pieces of a broken wheel away from the operator. (See Figure 4.) [Figures not included. See ED. NOTE.]

(d) Other portable grinders. The maximum angular exposure of the grinding wheel periphery and sides for safety guards used on other portable grinding machines must not exceed 180 degrees. Enclose the top half of the wheel. (See Figures 5 and 6.) [Figures not included. See ED. NOTE.]

(e) Mounting and inspection of abrasive wheels.

(A) Immediately before mounting, inspect all wheels to make sure they are not damaged. Check the spindle speed of the machine before mounting the wheel to be sure it does not exceed the maximum operating speed marked on the wheel.

(B) Grinding wheels must fit freely on the spindle and remain free under all grinding conditions. Keep a controlled clearance between the wheel hole and the machine spindle (or wheel sleeves or adaptors) to avoid excessive pressure from mounting and spindle expansion.

(C) All contact surfaces of wheels, blotters and flangers must be flat and free of foreign matter.

(D) When using a bushing in the wheel hole it must not exceed the width of the wheel nor contact the flanges.

(E) Do not operate an abrasive wheel designed to be held by flanges unless it is properly mounted between suitable flanges. Flanges must be at least one-third the diameter of the wheel, except for those types requiring flanges of a special design.

(F) Install blotters (compressible washers) between flanges and abrasive wheel surfaces to insure uniform distribution of flange pressure.

(f) Excluded machinery. OAR 437-004-2230(3) does not cover natural sandstone wheels and metal, wooden, cloth or paper discs with a layer of abrasive on the surface.

(4) Tools driven by internal combustion engines.

(a) Tools driven by internal combustion engines must have a positive "On" and "Off" ignition switch that will remain in either position.

(b) Tools driven by internal combustion engines must have effective means to control power except those that operate at constant speed. Throttle controls must return the engine to idling speed when released.

(c) Tools driven by internal combustion engines must have a self-rewinding starting device or be equally safe.

(d) Exhaust ports on tools driven by internal combustion engines must have mufflers and deflect exhaust fumes away from the operator when the tool is in use in its normal operating position.

(e) Stop the engine before fueling tools driven by an internal combustion engine.

(f) You must be able to quickly remove sling-carried tools powered by attached portable internal combustion engines.

(g) Inspect the fuel system of sling-carried tools before each use. Fix any defect immediately.

(5) Explosive actuated fastening tools.

(A)Definitions. Angle control. A safety feature designed to prevent a tool from operating when tilted beyond a pre-determined angle. Cased Power Load. A power load with the propellant contained in a closed case. Caseless Power Load. A power load with the propellant in solid form not requiring containment.

(B) Direct-Acting Tool. A tool in which the expanding gas of the power load acts directly on the fastener to be driven.

(C) Explosive power load, also known as load. Any form of any substance that can produce a propellant force.

(D) Fixture. A special shield that gives equal protection where the standard shield is not usable.

(E) Hammer-operated piston tool — low-velocity type. A tool that uses a heavy mass hammer and a load to move a captive piston to drive a stud, pin or fastener into a work surface. It always starts the fastener at rest and in contact with the work surface. Its design must limit the mean velocity of the stud, pin or fastener to a maximum of 300 feet per second when measured 6.5 feet from the muzzle end of the barrel.

(F) Head. That part of a fastener that extends above a work surface after being properly driven.

(G) High-velocity tool. A tool or machine that uses a load to propel or discharge a stud, pin or fastener, at velocities greater than 300 feet per second when measured 6.5 feet from the muzzle end of the barrel.

(H) Indirect-Acting Tool. A tool in which the expanding gas of the powder load acts directly on a captive piston that in turn drives the fastener.

(I) Low-velocity piston tool. A tool that uses a load and captive piston to drive a stud, pin or fastener into a work surface. Its design must limit the mean velocity to a maximum of 300 feet per second when measured 6.5 feet from the muzzle end of the barrel.

(J) Misfire. A condition in which the powder load fails to ignite after an attempt to fire the tool.

(K) Powder-Actuated Fastening System. A method comprising the use of a powder-actuated tool, a power load and a fastener.

(L) Powder-Actuated Tool, also known as Tool. A tool that uses the expanding gases from a power load to drive a fastener.

(M) Protective shield or guard. A device or guard to confine flying particles, attached to the muzzle end of the tool.

(N) Stud, pin, or fastener. A fastening device specifically designed and manufactured for use in explosive-actuated fastening tools.

(O) Test Velocity. A series of deliberately free-flighted fasteners whose velocities are measured 6 1/2 feet from the muzzle end of the tool using accepted ballistic test methods.

(P) To chamber. To fit properly without the use of excess force and without being loose in the chamber.

(Q) Tool. Unless indicated otherwise, an explosive-actuated fastening tool and all its accessories.

(b) General requirements.

(A) Explosive-actuated fastening tools actuated by explosives or any similar means that propel a stud, pin, fastener or other object to affix it to another object must meet the design requirements in paragraph (b) below. This requirement does not apply to devices designed for attaching objects to soft construction materials, such as wood, plaster, tar, dry wallboard and the like or to stud welding equipment.

(B) Operators and assistants using tools must wear eye protection. If required by the working conditions, use head and face protection as required under Personal Protective Equipment (4/I).

(b) Inspection, maintenance, and tool handling.

(A) High-velocity tools. High velocity tools must have these characteristics:

(i) The muzzle end of the tool must have a protective shield or guard at least 3 1/2 inches in diameter, mounted perpendicular to and concentric with the barrel. It must confine any flying fragments or particles that might be a hazard when fired.

(ii) Where a standard shield or guard will not work or where it does not provide adequate protection, an alternate device is acceptable. It must be built by the manufacturer of the tool, and provide an equal degree of protection.

(iii) It must be impossible to fire the tool unless it has a standard protective shield or guard, or the special device in (ii) above.

(I) The firing mechanism must prevent the tool from firing during loading or preparation to fire, or if dropped while loaded.

(II) Firing of the tool must require at least two separate and distinct actions of the operator. The final firing movement must be separate from the action of bringing the tool into the firing position.

(v) The tool must not work unless the operator is holding the tool against the work surface with a force at least 5 pounds more than the total weight of the tool.

(vi) The tool must not be operable with the standard guard indexed to the center position if any bearing surface of its guard tilts more than 8 degrees from contact with the work surface.

(vii) The tool must have a positive way of varying the power or there must be some other way for the operator to select a power level adequate to perform the work without excessive force.

(B) Tools of the low-velocity piston type must have the characteristics in (i) through (iv) below. The muzzle end of the tool must allow suitable protective devices, designed and built by the manufacturer of the tool, to be mounted perpendicular to the barrel. There must be a standard spall shield with each tool.

(I) In ordinary use the tool must not propel or discharge a stud, pin or fastener while loading or during preparation to fire or if dropped while loaded.

(II) Firing of the tool must depend on at least two separate and distinct actions of the operator. The final firing movement must be separate from the operation of bringing the tool into the firing position.

(iii) The tool must not to be operable unless the operator is holding it against the work surface with a force at least 5 pounds greater than the total weight of the tool.

(iv) The tool must have a positive way of varying the power or there must be some other way for the operator to select a power level adequate to perform the work without excessive force.

(C) Hammer operated piston tools, low-velocity type, must have the characteristics in (i) through (iv) below.

(i) The muzzle end of the tool must allow suitable protective devices, designed and built by the manufacturer of the tool, to be mounted perpendicular to the barrel. There must be a standard spall shield with each tool.

(ii) In ordinary use the tool must not propel or discharge a stud, pin or fastener while loading or during preparation to fire or if dropped while loaded.

(iii) Firing of the tool must depend on at least two separate and distinct actions of the operator. The final firing movement must be separate from the operation of bringing the tool into the firing position.

(iv) The tool must have a positive way of varying the power or there must be some other way for the operator to select a power level adequate to perform the work without excessive force.

(c) Requirements for loads and fasteners.

(A) There must be a standard way to identify the power levels of loads.

(B) Do not use a load (cased or caseless) that will accurately chamber in any existing approved commercially available low-velocity piston tool or hammer operated piston tool, low-velocity type, if it will cause a fastener to have a mean velocity greater than 300 feet per second when measured 6.5 feet from the muzzle end of the barrel. No individual test firing of a series can exceed 300 feet per second by more than 8 per- cent.

(C) Only use fasteners specifically made for a given tool.

(d) Operating requirements.

(A) Before using a tool, inspect it to see that it is clean, all moving parts operate freely and that the barrel is free of obstruction.

(B) When a tool develops a defect during use, immediately stop using it.

(C) Do not load tools until just prior to the intended firing time. Do not point loaded or empty tools at anyone.

(D) Do not leave loaded tools unattended.

(E) If the tool misfires, hold it in the operating position for at least 30 seconds. Then try to operate the tool a second time. Wait another 30 seconds with the tool in the operating position. If it still does not fire remove the explosive load according to the manufacturer's instructions.

(F) Do not leave tools unattended where they are available to unauthorized persons.

(G) Do not drive fasteners into very hard or brittle materials like cast iron, glazed tile, surface-hardened steel, glass block, face brick or hollow tile.

(H) Do not drive fasteners into soft materials so that the projectile could exit the other side:

(i) Do not drive fasteners directly into materials such as brick or concrete closer than 3 inches from the unsupported edge or corner or into steel surfaces closer than 1/2-inch from the unsupported edge or corner, unless the tool has a special guard. (Exception: Low-velocity tools may drive no closer than 2 inches from an edge in concrete or 1/4-inch in steel.)

(ii) When fastening other materials, such as a 2-inch by 4-inch wood section to a concrete surface, it is permissible to drive a fastener of no greater than 7/32-inch shank diameter not closer than 2 inches from the unsupported edge or corner of the work surface.

(J) Do not drive fasteners through existing holes unless you use a positive guide for accurate alignment.

(K) Do not drive a fastener into a spalled area caused by an unsatisfactory fastening.

(L) Do not use explosive actuated tools in an explosive or flammable atmosphere.

(M) Use all tools with the correct shield, guard or attachment recommended by the manufacturer.

(N) Take damaged or defective tools out of service. Inspect tools at regular intervals and repair them according to the manufacturer's specifications.

[ED. NOTE: Figures referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06; OSHA 7-2008, f. & cert. ef. 5-30-08

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

Rule Caption: Rules affecting workers' compensation insurance, claims processing, medical billing, and return-to-work assistance.
Adm. Order No.: WCD 1-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Adopted: 436-050-0025
Rules Amended: 436-001-0003, 436-001-0004, 436-001-0005, 436-001-0009, 436-001-0019, 436-001-0023, 436-001-0027, 436-001-0030, 436-001-0170, 436-001-0240, 436-001-0246, 436-001-0252, 436-001-0265, 436-001-0296, 436-001-0300, 436-009-0004, 436-009-0008, 436-009-0010, 436-009-0015, 436-009-0020, 436-009-0030, 436-009-0040, 436-009-0070, 436-009-0090, 436-015-0005, 436-015-0009, 436-015-0010, 436-015-0020, 436-015-0030, 436-015-0040, 436-015-0110, 436-030-0003, 436-040-0003, 436-045-0003, 436-050-0002, 436-050-0003, 436-050-0005, 436-050-0008, 436-050-0045, 436-050-0050, 436-050-0100, 436-050-0110, 436-050-0120, 436-050-0170, 436-050-0175, 436-050-0190, 436-050-0200, 436-050-0210, 436-050-0220, 436-110-0240, 436-110-0320, 436-110-0330, 436-160-0020, 436-160-0070, 436-160-0090, 436-160-0330, 436-160-0340, 436-160-0350, 436-160-0360, 436-160-0410, 436-160-0430
Rules Repealed: 436-040-0100
Subject: Amendments to OAR 436-001, "Procedural Rules for Rulemaking and Hearings":

• Clarify the applicability of the rules (436-001-0003)

• Carry out ORS 183.335 by requiring notice to legislators about proposed rulemaking (436-001-0009)

• Clarify the requirements for and methods of requesting a hearing (436-001-0019)

• Clarify that parties only need to provide supplemental exhibits to the director's representative if the director has filed an entry of appearance; clarify that all exhibits offered will be included in the hearing file whether or not they are admitted into the evidentiary record (436-001-0240)

• Clarify that written exceptions to a proposed and final order should include argument (436-001-0246)

• Provide that a party may request that director review be stayed if there is a pending matter concerning a claim that may make the matter within the director's jurisdiction moot (436-001-0252)

• Change the time frame for submitting a statement of services from seven days of the hearing date to any time before an order is issued (436-001-0265)

• Allow the ALJ to issue a proposed and final order dismissing the request for hearing if the parties resolve all issues within the director's jurisdiction via a settlement or agreement (436-001-0170 & 0296)

Amendments to OAR 436-009, "Oregon Medical Fee and Payment Rules":

• Adopt by reference updated medical fee schedules and resources for the payment of health care providers, except as otherwise provided in these rules (436-009-0004)

• Extend the time for an insurer to request that a health care provider refund an overpayment for a compensable medical service from 90 to 180 days from the payment date; if the provider fails to respond or disagrees that an overpayment occurred, the insurer may request review by the director within 90 days of requesting the refund (436-009-0008)

• Exclude lumbar artificial disc replacement from compensability except under specified conditions (436-009-0015)

• Remove electronic data interchange medical reporting requirements in Appendix B, because OAR 436-160 includes the "Medical Bill Data Element Requirement Table" (436-009-0030)

• Raise the evaluation/management conversion factor from $59.79 to $64.79; lower the surgery conversion factor from $93.66 to $86.44 (436-009-0040)

• Reduce the maximum allowable fee for medications from 88% of the average wholesale price (AWP) to 83.5% of AWP and reduce the dispensing fee from $8.70 to $2.00 (436-009-0090)

Amendments to OAR 436-015, "Managed Care Organizations":

• Clarify MCO certification requirements by defining the terms "group" (of medical service providers) and "non-qualifying employer." (436-015-0005 & 0009)

• Require that if an MCO has not obtained contracts with more than one insurer within one year from the effective date of its first contract, the MCO must provide the director with a report documenting its efforts to obtain additional contracts (436-015-0009)

• Eliminate the requirement that a prospective MCO submit certain documentation within 120 days of the filing of the "Notice of Intent to Form" (436-015-0010 & 0030)

• Reduce the number of copies of MCO applications or plans that must be submitted to the director from four copies to one copy (436-015-0020 & 0030)

• Eliminate the requirement that a prospective MCO submit a certification of incorporation and a copy of the MCO by-laws with its application (436-015-0030)

• For the purpose of quarterly data reporting, require that MCOs submit National Provider Identification (NPI) numbers rather than Oregon license numbers for their member providers (436-015-0040)

• Update the wording of appeal rights notices that MCOs must provide to a worker and all other parties that may appeal an MCO's decision, to include updated department contact information, and that appeal time frames begin with the mailing date of the notice, not from the date notice is received by the party; simplify the process for making complaints about rule violations (436-015-0110)

Amendments to OAR 436-030, "Claim Closure and Reconsideration," 436-040, "Workers with Disabilities Program," and 436-045, "Reopened Claims Program":

• Correct the applicability provisions in rules 030-0003, 040-0003, and 045-0003

• Repeal OAR 436-040-0100, "Suspension and Revocation of Authorization to Issue Guaranty Contracts," because this rule duplicates OAR 436-050-0015

Amendments to OAR 436-050, "Employer/Insurer Coverage Responsibility":

• Abbreviate the definition of "complete records" and adequately describe the term in the context of several rules in division 050 (436-050-0005, 0110, & 0210)

• Clarify rights of parties to appeal department orders by deleting an unnecessary and potentially misleading provision, which implies that if an order is final it cannot be appealed (436-050-0008(5)(d))

• Adopt a rule to explain how the Workers' Compensation Division will serve penalty orders (436-050-0025)

• To implement House Bill 2007, expand the definition of "owner of the private home" to include any person related by an Oregon registered domestic partnership (436-050-0045)

• Eliminate the provision that an employer's cancellation of coverage with an insurer does not terminate a guaranty contract; relocate a provision regarding overlapping self-insurance certification and guaranty contract coverage to rule 0200 (436-050-0100 & 0200)

• Supplement and clarify the description of record-keeping requirements (436-050-0110)

• Eliminate the requirement to include workers' social security numbers on lists of claims provided to the director when an insurer or self-insured employer transfers claims to a new processor/location (436-050-0110 & 0210)

• Require insurers and self-insured employers to keep written records as to whether supplemental disability benefits were approved or denied (436-050-0120 & 0220)

• Provide that excess insurance coverage may include a deductible endorsement acceptable to the director (436-050-0170)

• Increase the time for a self-insured municipality to provide its annual report to the director (436-050-0175)

• Require that self insured employers notify the director within 30 days when the employer changes its operation in any manner that affects its workers' compensation claims liability (436-050-0190)

• Require that self-insured employers conduct certain claim processing activities and record-keeping, and accommodate periodic audits, at in-state locations (436-050-0210)

• Require that self-insured employers provide contact information to the director for the location where records are or will be kept and where claims are or will be processed in Oregon; require that self-insured employers provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director (436-050-0220)

Amendments to OAR 436-110, "Preferred Worker Program":

• Allow issuance of a Preferred Worker card to a worker determined eligible before claim closure, even if the worker does not have available, immediate employment (436-110-0320)

• Provide additional time for insurers to request claim cost reimbursement (from the Workers' Benefit Fund) if an employer informs an insurer about an injury to a preferred worker after the existing reimbursement deadlines have passed (436-110-0330)

Amendments to OAR 436-160, "Electronic Data Interchange":

• Provide the director discretion to require a trading partner agreement for medical data reporting, but eliminate the mandate for trading partner agreements for all EDI (436-160-0020)

• Clarify and simplify address reporting requirements (436-160-0090)

• Eliminate the requirement to submit paper reports to add or delete coverage for non-subject workers; the insurer must file the appropriate "include" or "exclude" endorsement transaction to the associated policy filing (436-160-0340 & 0350)

• Require insurers to notify the director of guaranty contract terminations within ten days (not within seven days) consistent with requirements in OAR 436-050 (436-160-0360)

• Eliminate the requirement that the insurer submit a cancellation of a medical bill before resubmitting (436-160-0430)

• Revise electronic data interchange medical reporting requirements in Appendix B (436-160-0410)

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

436-001-0003
Applicability and Purpose of these Rules

(1) This rule division establishes supplemental procedures for rulemaking and hearings, and carries out the provisions of ORS chapters 183 and 656.

(2) Except as provided in section (4), these rules apply to hearings on matters within the director's jurisdiction that are held on or after July 1, 2008. Matters within the director's jurisdiction are matters other than those concerning a claim, as defined by ORS 656.704.

(3) In general, the rules of the Workers' Compensation Board, in OAR chapter 438, apply to the conduct of hearings, unless these rules provide otherwise.

(4) These rules do not apply to hearings requested under ORS 656.740.

(5) These rules apply to all division rulemaking on or after July 1, 2008.

(6) Unless otherwise obligated by statute, the director may waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704, 183
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0004
Definitions

The following definitions apply to these rules, unless the context requires otherwise.

(1) "Administrative law judge" means an administrative law judge appointed by the Workers' Compensation Board, as defined in OAR 438-005-0040.

(2) "Administrator" means the administrator of the Workers' Compensation Division or the administrator's designee.

(3) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(4) "Delivered" means physical delivery to the division's Salem office during regular business hours.

(5) "Department" means the Department of Consumer and Business Services.

(6) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(7) "Division" means the department's Workers' Compensation Division.

(8) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules.

(9) "Final order" means a final, written action of the director.

(10) "Mailed" means correctly addressed, with sufficient postage and placed in the custody of the U. S. Postal Service.

(11) "Party" may include, but is not limited to, a worker, an employer, an insurer, a self-insured employer, a managed care organization, a medical provider, or the division.

(12) "Proposed and final order" means an order subject to revision by the director which becomes final unless exceptions are timely filed or the director issues a notice of intent to review the proposed and final order.

(13) Other words and phrases have the same meaning as given in ORS 183.310, where applicable.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704, 183
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0005
Model Rules of Procedure Governing Rulemaking

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 Workers' Compensation Division.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.325 - 183.410
Hist.: WCD 5-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 3-1978(Admin), f. & ef. 3-6-78; WCD 2-1982(Admin), f. 1-20-82, ef. 1-21-82; Renumbered from 436-090-0110 thru 436-090-0180, 5-1-85; WCD 3-1986, f. & ef. 5-15-86; WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 1-2005, f. & cert. ef. 1-14-05; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0009
Notice of Division Rulemaking

(1) Except when adopting a temporary rule, the division will give prior public notice of the proposed adoption, amendment, or repeal of any rule by:

(a) Publishing notice of the proposed rulemaking action in the Secretary of State's Oregon Bulletin at least 21 days prior to the effective date of the rule;

(b) Notifying interested persons and organizations on the division's notification lists of proposed rulemaking actions under ORS 183.335; and

(c) Providing notice to legislators as required by ORS 183.335(15).

(2) The division will add a person or organization to its notification list if the person or organization:

(a) Subscribes to the division's e-mail notification service, through the division's Web site at wcd.oregon.gov, or

(b) Requests in writing to receive hard-copy notification, and includes the person or organization's full name and mailing address.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.335 & 84.022
Hist.: WCB 16-1975, f. & ef. 10-20-75; WCD 4-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 4-1978(Admin), f. & ef. 3-6-78; Renumbered from 436-090-0505, 5-1-85; WCD 3-1986, f. & ef. 5-15-86; WCD 9-1992, f. & cert. ef. 5-22-92; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0000, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0019
Requests for Hearing

(1) A request for hearing on a matter within the director's jurisdiction must be filed with the administrator no later than the filing deadline. Filing deadlines will not be extended except as provided in section (7) of this rule.

(2) A request for hearing must be in writing. A party may use the division's Form 2839. A request for hearing must include the following information, as applicable:

(a) The name, address, and phone number of the party making the request;

(b) Whether the party making the request is the worker, insurer, medical provider, employer, any other party, or an attorney on behalf of a party;

(c) The number of the administrative order being appealed;

(d) The worker's name, address, and phone number;

(e) The name, address, and phone number of the worker's attorney, if any;

(f) The date of injury;

(g) The insurer's or self-insured employer's claim number;

(h) The division's (WCD) file number; and

(i) The reason for requesting a hearing.

(3) Requests for hearing may be filed in any of the following ways:

(a) By mail.

(b) By hand-delivery.

(c) By fax, if the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(d) By e-mail to wcd.hearings@state.or.us. If the request for hearing is an attachment to the e-mail, it must be in a format that Microsoft Word 2000® (.doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(e) By using the on-line form available on the division's Web site at wcd.oregon.gov.

(4) The requesting party must send a copy of the request to all known parties and their legal representatives, if any.

(5) Timeliness of requests for hearing will be determined under OAR 436-001-0027.

(6) The director will refer timely requests for hearing to the board for a hearing before an administrative law judge. The director may withdraw a matter that has been referred if the request for hearing is premature, if the issues in dispute become moot, or if the director otherwise determines that the matter is not appropriate for hearing at that time.

(7) The director will deny requests for hearing that are filed after the filing deadline. The party may request a limited hearing on the denial of the request for hearing within 30 days after the mailing date of the denial. The request must be filed with the administrator. At the limited hearing, the administrative law judge may only consider whether:

(a) The denied request for hearing was filed timely; or

(b) If good cause existed that prevented the party from timely requesting a hearing on the merits. For the purpose of this rule, "good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.

Stat. Auth.: ORS 656.726(4) & 84.013
Stats. Implemented: ORS 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0155, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0023
Other Filings and Submissions

(1) Except as provided in section (3) of this rule, any filing, motion, request, document, or correspondence filed or submitted in a matter within the director's jurisdiction must be filed or submitted:

(a) To the division before the dispute is referred to the board;

(b) To the administrative law judge after the dispute is referred to the board but before the administrative law judge issues a proposed and final order; and

(c) To the division after the administrative law judge issues a proposed and final order, unless it is a request for correction of errors in the proposed and final order under OAR 436-001-0246(6).

(2) A copy of any filing, motion, request, document, or correspondence must be sent to the other parties, or their legal representatives, at the same time it is filed or submitted to the division or administrative law judge.

(3) A party must notify the division and the other parties of any changes in the party's mailing address or legal representation.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0027
Timeliness; Calculation of Time

(1) Timeliness of any document required by these rules to be filed or submitted to the division is determined as follows:

(a) If a document is mailed, it will be considered filed on the date it is postmarked.

(b) If a document is faxed or e-mailed, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date.

(c) If a document is delivered, it must be delivered during regular business hours to be considered filed on that date.

(2) The date and time of receipt for electronic filings is determined under ORS 84.043.

(3) Time periods allowed for a filing or submission to the division are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the

period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0030
Role of the Workers' Compensation Division

(1) In any hearing, the director may request to:

(a) Receive notice of all matters;

(b) Receive copies of all documents; and

(c) Present evidence, testimony, and argument.

(2) The director may appear in a matter by filing an entry of appearance. The director may be represented by an agency representative, assistant attorney general, or special assistant attorney general as authorized by the Department of Justice. If the director enters an appearance, all notices and documents in the hearing must be provided to the director's representative.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 180.220(2), 180.235 & 656.704
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98 ; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0170
Duties and Powers of the Administrative Law Judge

(1) The administrative law judge may conduct the hearing in any manner, consistent with these rules, that will achieve substantial justice.

(2) Unless provided otherwise by statute or rule, any order issued by an administrative law judge regarding a matter within the director's jurisdiction is a proposed and final order subject to review by the director under OAR 436-001-0246.

(3) The administrative law judge may dismiss requests for hearing as provided in OAR 436-001-0296.

(4) Where appropriate, the administrative law judge may remand a dispute to the director for further administrative action.

(5) The administrative law judge may consolidate matters in which there are common parties or common issues of law or fact.

(6) The administrative law judge may separate matters to promote efficient disposition of the matters.

(7) Consolidation of matters under section (5) of this rule or under ORS 656.704(3)(c) is only for the purpose of hearing. The administrative law judge must issue a separate order for matters other than those concerning a claim.

(8) On the motion of a party, the division, or the administrative law judge, the administrative law judge may continue a hearing to allow the presentation of oral or written legal argument by the Department of Justice.

(9) The administrative law judge may send the division a written question regarding which rules or statutes apply to a matter, or regarding the division's interpretation of the rules and statutes. If the administrative law judge sends such a question, the administrative law judge must provide a written summary of the context in which the question arises, provide a reasonable time for the division to respond, and send a copy to all parties.

(10) The administrative law judge may conduct a hearing by telephone if all parties agree.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0240
Exhibits and Evidence

(1) Within 21 days after referral of the request for hearing to the board, the division will provide the parties and the administrative law judge copies of all documents that were relied upon in the underlying action or order, with an index.

(2) Not less than 28 days before the hearing, or within seven days of receipt of the division's document index and documents, whichever is later, the petitioner(s) must provide copies of any additional exhibits they will offer at hearing to the other parties, the administrative law judge, and the director's representative, if the director has filed an entry of appearance. The exhibits must be marked and include a supplemental index, numbered to coincide in chronological order with the division's exhibits and exhibit list. For example, an exhibit that is chronologically between the division's exhibits 5 and 6 would be marked as "Exhibit 5a" or "Ex. 5a."

(3) Not less than 14 days before the hearing, the respondent(s)/cross-petitioner(s) must provide copies of any additional exhibits they will offer at hearing to the other parties, the administrative law judge, and the director's representative, if the director has filed an entry of appearance. The exhibits must be marked and indexed in the same manner as provided in section (2).

(4) Unless withdrawn, all exhibits offered will be included in the hearing file, whether or not they are admitted into the evidentiary record.

(5) At the discretion of the administrative law judge, an accurate description or photograph of an object or real evidence may be substituted for the object or real evidence. The party offering the evidence is responsible for providing the description or photograph, and for retaining custody of the object until the case is closed.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0246
Proposed and Final Orders — Exceptions, Correction, Director Review

(1) Under ORS 656.704(2)(a), a party must seek director review of a proposed and final order before petitioning for judicial review under ORS 183.482.

(2) The parties or the division may initiate director review of a proposed and final order by filing exceptions as follows:

(a) Written exceptions, including any argument, must be filed with the administrator within 30 days of the mailing date of the proposed and final order;

(b) A written response to the exceptions must be filed within 20 days of the date the exceptions were filed;

(c) A written reply to the response, if any, must be filed within 10 days of the date the response(s) was filed.

(3) If exceptions are timely filed, the director may issue a final order or an amended proposed and final order, request the administrative law judge to hold further hearing, or remand the matter for further administrative action.

(4) Within 30 days of the mailing date of the proposed and final order, the director may issue a notice of intent to review the proposed and final order, even if no exceptions are filed.

(5) All proposed and final orders must contain language notifying the parties of their right to file exceptions, how to file, and the timeframes.

(6) The administrative law judge may withdraw a proposed and final order for correction of errors within 10 calendar days of the mailing date of the order. The time for filing exceptions begins on the date the corrected proposed and final order is mailed.

(7) If no exceptions are timely filed or if no notice of intent to review is issued, the proposed and final order will become final 30 days after the mailing date of the order.

(8) Any requests for review or requests for reconsideration of a proposed and final order filed with the board or administrative law judge within 30 days of the mailing date of the order will be forwarded to the director and treated as timely exceptions under this rule.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0275, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0252
Stay of Director and Administrative Review

(1) A party may request that director review be stayed if exceptions are timely filed and there is a pending matter concerning a claim that may make the matter within the director's jurisdiction moot.

(2) If matters are consolidated under ORS 656.704(3)(c), and a party requests board review of the order for those matters concerning a claim, and a party files exceptions on the proposed and final order for matters other than those concerning a claim, the director may stay director review of the proposed and final order. If director review is stayed, the parties will be provided the opportunity to file a written response and reply as provided in OAR 436-001-0246, and director review will then be stayed until the board issues an order for those matters concerning a claim.

(3) If matters are consolidated under ORS 656.704(3)(c), and a party requests board review of the order for those matters concerning a claim, and the administrative law judge remands the matters other than those concerning a claim to the director for further administrative action, the director may

stay further administrative action until the board issues an order for those matters concerning a claim.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0265
Attorney Fees

(1) In cases where the director or administrative law judge is required to assess an attorney fee under ORS 656.385(1):

(a) The fee must be based on the factors listed in ORS 656.385(1).

(b) Absent a showing of extraordinary circumstances or unless otherwise agreed by the parties, the fee may not exceed $2,000 nor fall outside the ranges provided in the following matrix: [Matrix not included. See ED. NOTE.]

(c) Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of $6000.

(d) In cases under ORS 656.245, 656.247, 656.260, or 656.327, the factors listed in OAR 436-010-0008(12) may also be considered.

(e) In cases under ORS 656.340, the factors listed in OAR 436-120-0008(2) may also be considered.

(2) Except as provided in section (3), in cases where the administrative law judge or director assesses an attorney fee, the following factors may also be considered:

(a) The complexity of the issue(s) involved;

(b) The quality of the legal representation;

(c) The value of the interest involved;

(d) The nature of the proceedings;

(e) The risk in a particular case that an attorney's efforts may go uncompensated;

(f) The assertion of frivolous issues or defenses;

(g) A statement of services, if submitted before an order is issued; and

(h) Any other relevant consideration deemed appropriate by the administrative law judge or director.

(3) In cases under ORS 656.262(11) where the issue is solely the assessment and payment of a penalty and attorney fee, OAR 438-015-0110 applies.

(4) If an attorney fee has been assessed by an administrative law judge in a proposed order, the opposing parties may file written exceptions to the fee under OAR 436-001-0246.

[ED. NOTE: Matrix referenced are available from the agency.]
Stat. Auth.: ORS 656.385(1) & 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388 & 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0296
Settlements and Dismissals

(1) If, after a request for hearing is filed but before a proposed and final order is issued, an agreement under ORS 656.236 or 656.289(4) is approved that resolves all issues in the matter within the director's jurisdiction, the administrative law judge may issue a proposed and final order dismissing the request for hearing.

(2) If, after a request for hearing is filed but before a proposed and final order is issued, the parties reach agreement on all issues in the matter within the director's jurisdiction, the administrative law judge may issue a proposed and final order approving the agreement and dismissing the request for hearing.

(3) If the matter within the director's jurisdiction is consolidated with matters concerning a claim and the parties reach agreement on all issues in the matter within the director's jurisdiction prior to issuance of a proposed and final order, the administrative law judge may issue a proposed and final order approving the agreement and dismissing the request for hearing.

(4) Notwithstanding OAR 436-001-0170(2), the administrative law judge may issue a final order of dismissal when the requesting party withdraws the request for hearing and no cross-request for hearing has been filed.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-001-0300
Alternative Dispute Resolution

(1) The director may offer the parties to a matter within the director's jurisdiction alternative dispute resolution as a way to resolve the matter prior to a hearing.

(2) If the parties agree to attempt alternative dispute resolution before the director after referral of the matter to the board for hearing, the director will notify the administrative law judge that the parties have agreed to attempt resolution, and that the hearing should be deferred until the process is complete. If the parties do not settle, the director will notify the administrative law judge to proceed with the hearing.

(3) If the parties settle the matter within the director's jurisdiction through alternative dispute resolution before the director, the director will issue an order dismissing the request for hearing.

(4) Nothing in this rule prevents the parties from participating in the board's mediation program for those matters within the director's jurisdiction.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.502, 656.704
Hist.: WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-009-0004
Adoption of Standards

(1) The director adopts, by reference, the columns titled "CPT/HCPCS," "Mod," "Physician Work RVUs," "Year 2008 Transitional Non-Facility PE RVUs," "Year 2008 Transitional Facility PE RVUs," "Malpractice RVUs," and "Global" in the Centers for Medicare & Medicaid Services (CMS) 2008 Medicare Resource-Based Relative Value Scale (RBRVS) Addendum B and Addendum C, 72 Federal Register No. 227, November 27, 2007, as the basis for the fee schedule for payment of medical service providers except as otherwise provided in these rules. The director does not adopt the definitions, status indicators, alpha codes, edits, processes, policies or philosophies of CMS, such as the National Correct Coding Initiative.

(2) The director adopts, by reference, the American Society of Anesthesiologists ASA, Relative Value Guide 2008 as a supplementary fee schedule for payment of anesthesia service providers except as otherwise provided in these rules for those anesthesia codes not found in the Federal Register.

(3) The director adopts, by reference, the American Medical Association's (AMA) The Physicians' Current Procedural Terminology (CPT® 2008), Fourth Edition Revised, 2007, for billing by medical providers except as otherwise provided in these rules. The guidelines are adopted as the basis for determining level of service.

(4) The director adopts, by reference, the AMA's CPT® Assistant, Volume 0, Issue 04 1990 through Volume 17, Issue 12 2007, as a supplement for determining the level of service described by the CPT® manual guidelines. If there is a conflict between the CPT® manual and CPT® Assistant, the CPT® manual shall be the controlling resource to determine the level of service.

(5) The director adopts, by reference, only the alphanumeric codes from the CMS Healthcare Common Procedure Coding System (HCPCS) to be used when billing for services only to identify products, supplies, and services that are not described by CPT® codes or that provide more detail than a CPT® code. The director does not adopt the edits, processes, exclusions, color-coding and associated instructions, age and sex edits, notes, status indicators, or other policies of CMS.

(6) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in Addenda B and C, 72 Federal Register, No. 227, November 27, 2007, ASA Relative Value Guide 2008, CPT® 2008, CPT® Assistant, or HCPCS 2008.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.248 & 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-009-0008
Administrative Review Before the Director

(1)(a) The director has exclusive jurisdiction to resolve all disputes concerning medical services including treatment, medical fees and nonpayment of compensable medical bills. The director may, on the director's own motion, initiate a medical service review at any time. A party need not be represented to participate in the administrative review before the director.

(b) Any party may request the director provide voluntary alternative dispute resolution after a request for administrative review or hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, the director will put the agreement in writing; or the

parties shall put any agreement in writing for approval by the director. If the dispute is not resolved through alternative dispute resolution, the director will issue an order.

(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 30 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. Administrative review by the director must be requested within 60 days of issuance of the MCO's final decision under the MCO's dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving fee and billing disputes, the insurer shall advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(c) An insurer may request a refund from a provider for any amount it determines was overpaid for a compensable medical service. The insurer must make the request within 180 days of the payment date. If the provider does not respond to the request, or disagrees that a service was overpaid, the insurer may request director review within 90 days of requesting the refund.

(d) Under ORS 656.704(3)(c), when there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue may first be decided by the Hearings Division of the Workers' Compensation Board.

(3) Parties must submit requests for administrative review to the director in the form and format prescribed by the director. When an insurer or the worker's representative submits a request without the required information, at the director's discretion the administrative review may not be initiated until the information is submitted. Unrepresented workers may contact the director for help in meeting the filing requirements. The requesting party must simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number.

(b) Specify the issues in dispute and the relief sought.

(c) Provide the specific dates of the unpaid disputed treatment or services.

(d) If the request for review is submitted by either the insurer or medical provider, it shall state specific code(s) of service(s) in dispute and include sufficient documentation to support the review request, including but not limited to copies of original CMS bills, chart notes, bill analyses, operative reports, any correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute. The insurer or medical provider requesting review shall certify that they have provided all involved parties a copy of:

(A) The request for review; and

(B) Any attached supporting documentation; and

(C) If known, an indication of whether or not there is an issue of causation or compensability of the underlying claim or condition.

(4) The division will investigate the matter upon which review was requested.

(a) The investigation may include, but not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the dispute, or consultation with an appropriate committee of the medical provider's peers.

(b) Upon receipt of a written request for additional information, the party must respond within 14 days.

(c) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) A party fails to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement.

(5) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party may also request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new information which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed to the director before the administrative order becomes final.

(6) Hearings before an administrative law judge: Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254, or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as described in OAR 436-010-0008(14).

(8) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (7) of this rule, according to these rules, may request administrative review by the director as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

Stat. Auth.: ORS 656.704, 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-89, (Former sections (3), (4), & (7) Renumbered to 436-010-0130); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90;WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0110; 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 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; 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 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-009-0010
General Requirements for Medical Billings

(1) Only treatment that falls within the scope and field of the practitioner's license to practice will be paid under a worker's compensation claim.

(2) Billings must include the worker's full name and date of injury, the employer's name and, if available, the insurer's claim number and the provider's NPI. If the NPI is not available, then the provider must provide its license number and FEIN. For provider types not licensed by the state, "999999" must be used. All medical providers must submit bills to the insurer or managed care organization, as provided by their contract for medical services, on a completed current UB-04 (CMS 1450) or CMS 1500 form, except for:

(a) Dental billings, which must be submitted on American Dental Association dental claim forms;

(b) Pharmacy billings, which must be submitted on the most current National Council for Prescription Drug Programs (NCPDP) form; and

(c) EDI transmissions of medical bills under OAR 436-009-0030(3)(c).

(d) Computer-generated reproductions of forms referenced in subsections (2)(a) and (b) may also be used.

(3)(a) All original medical provider billings must be accompanied by legible chart notes documenting services which have been billed and identifying the person performing the service and license number of the person providing the service. Medical providers are not required to provide their license number if they are already providing a national identification number.

(b) When processing billings via EDI, the insurer may waive the requirement that billings be accompanied by chart notes. The insurer remains responsible for payment of only compensable medical services. The medical provider may submit their chart notes separately or at regular intervals as agreed with the insurer.

(4) When billing for medical services, a medical service provider must use codes listed in CPT® 2008 or Oregon Specific Codes (OSC) that accurately describe the service. If there is no specific CPT® code or OSC, a medical service provider must use the appropriate HCPCS code, if available, to identify the medical supply or service. Pharmacy billings must use the National Drug Code (NDC) to identify the drug or biological billed. A "zz" modifier must be used when billing electronically for services that use an OSC.

(a) If there is no specific code for the medical service, the medical service provider shall use the appropriate unlisted code from HCPCS or the unlisted code at the end of each medical service section of CPT® 2008 and provide a description of the service provided.

(b) Any service not identifiable with a code number must be adequately described by report.

(5) Medical providers must submit billings for medical services in accordance with this section.

(a) Bills must be submitted within:

(A) 60 days of the date of service.

(B) 60 days after the medical provider has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or

(C) 60 days after any litigation affecting the compensability of the service is final, if the provider receives written notice of the final litigation from the insurer.

(b) A medical service billing submitted later than the time frames in subsection(a) of this section may be payable in full if the provider establishes good cause for submitting the bill late. Good cause may include, but is not limited to, such issues as extenuating circumstances or circumstances considered outside the control of the provider.

(c) A bill rendered over twelve months after the date of service is not payable, except when a provision of subsection (a) of this section is the reason the billing was rendered after twelve months.

(6) When rebilling, medical providers must indicate that the charges have been previously billed.

(7) The medical provider must bill their usual fee charged to the general public. The submission of the bill by the medical provider shall serve as a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The department shall have the right to require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee charged to the general public. For purposes of this rule, "general public" means any person who receives medical services, except those persons who receive medical services subject to specific billing arrangements allowed under the law which require providers to bill other than their usual fee.

(8) Medical providers shall not submit false or fraudulent billings, including billing for services not provided. As used in this section, "false or fraudulent" means an intentional deception or misrepresentation with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. A request for pre-payment for a deposition is not considered false or fraudulent.

(9) When a worker with two or more separate compensable claims receives treatment for more than one injury or illness, costs must be divided among the injuries or illnesses, irrespective of whether there is more than one insurer.

(10) Workers may make a written request to a medical provider to receive copies of medical billings. Upon receipt of a request, the provider may furnish the worker a copy during the next billing cycle, but no later than 30 days following receipt of the request. Thereafter, worker copies must be furnished during the regular billing cycle.

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

Stat. Auth.: ORS 656.245, 656.252, 656.254

Stats. Implemented: ORS 656.245, 656.252, 656.254

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-009-0015

Limitations on Medical Billings

(1) An injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer according to OAR chapter 436. A medical provider shall not attempt to collect payment for any medical service from an injured worker, except as follows:

(a) When the injured worker seeks treatment for conditions not related to the accepted compensable injury or illness;

(b) When the injured worker seeks treatment that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but not be limited to, ongoing treatment by non-attending physicians in excess of the 30-day/12-visit period or by nurse practitioners in excess of the 90-day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer or the director under OAR 436-010-0290, after the worker has been provided notice that the worker is medically stationary;

(d) When the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275; or

(e) When the injured worker seeks treatment after being notified that such treatment has been determined to be unscientific, unproven, outmoded, or experimental.

(2) A medical provider may not charge any fee for completing a medical report form required by the director under this chapter or for providing chart notes required by OAR 436-009-0010(3) of this rule.

(3) The medical provider may not charge a fee for the preparation of a written treatment plan and the supplying of progress notes that document the services billed as they are integral parts of the fee for the medical service.

(4) No fee is payable for the completion of a work release form or completion of a PCE form where no tests are performed.

(5) No fee is payable for a missed appointment except a closing examination or an appointment arranged by the insurer or for a Worker Requested Medical Examination. Except as provided in OAR 436-009-0070(10)(d) and (11)(d), when the worker fails to appear without providing the medical provider at least 24 hours notice, the medical provider shall be paid at 50 percent of the examination or testing fee.

(6) Under ORS 656.245(3), the director has excluded from compensability the following medical treatment. While these services may be provided, medical providers shall not be paid for the services or for treatment of side effects.

(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface EMG (electromylography) tests;

(d) Rolfing;

(e) Prolotherapy;

(f) Thermography; and

(g) Lumbar artificial disc replacement, unless it is a single level replacement with an unconstrained or semi-constrained metal on polymer device and:

(A) The single level artificial disc replacement is between L3 and S1;

(B) The injured worker is between the age of 16 and 60;

(C) The injured worker underwent a minimum of 6 months unsuccessful exercise based rehabilitation; and

(D) The procedure is not found inappropriate under OAR 436-010-0230(13) and (14).

(7) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.

(8) Mechanical muscle testing may be paid a maximum of three times during a treatment program when prescribed and approved by the attending physician or authorized nurse practitioner: once near the beginning, once near the middle, and once near the end of the treatment program. Additional mechanical muscle testing shall be paid for only when authorized in writing by the insurer prior to the testing. The fee for mechanical muscle testing includes a copy of the computer printout from the machine, written

interpretation of the results, and documentation of time spent with the patient.

(9)(a) When a physician or authorized nurse practitioner provides services in hospital emergency or outpatient departments which are similar to services that could have been provided in the physician's or authorized nurse practitioner's office, such services shall be identified by CPT® codes and paid according to the fee schedule.

(b) When a worker is seen initially in an emergency department and is then admitted to the hospital for inpatient treatment, the services provided immediately prior to admission shall be considered part of the inpatient treatment. Diagnostic testing done prior to inpatient treatment shall be considered part of the hospital services subject to the hospital fee schedule.

(10) Physician assistant, authorized nurse practitioner, or out-of-state nurse practitioner fees shall be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. The bills for services by these providers must be marked with modifier "-81". Chart notes shall document when medical services have been provided by a physician assistant or nurse practitioner.

(11) Except as otherwise provided in OAR 436-009-0070, when a medical provider is asked to prepare a report, or review records or reports prepared by another medical provider, an insurance carrier or their representative, the medical provider should bill for their report or review of the records utilizing CPT® codes such as 99080. Refer to specific code definitions in the CPT® for other applicable codes. The billing should include documentation of the actual time spent reviewing the records or reports.

[Publications: Publications referenced are available from the agency.
Stat. Auth.: ORS 656.245, 656.252 & 656.254
Stats. Implemented: ORS 656.245, 656.252 & 656.254
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

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 a governing MCO 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 a governing MCO 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), 656.012, 656.236(5), 656.327(2), 656.313(4)(d)
Stats. Implemented: ORS 656.248, 656.252, 656.256, sec. 2, Ch. 771, OL 1991
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

436-009-0030
Insurer's Duties and Responsibilities

(1) The insurer must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(2) The insurer, or its designated agent, may request from the medical provider, any and all necessary records needed to review accuracy of billings. The medical provider may charge an appropriate fee for copying documents in accordance with OAR 436-009-0070(1). If the evaluation of the records must be conducted on-site, the provider must furnish a reasonable work-site for the records to be reviewed at no cost. These records must be provided or made available for review within 14 days of a request.

(3) Insurers must date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the billing is submitted in proper form in accordance with OAR 436-009-0010(2) through (4) and clearly shows that the treatment is related to the accepted compensable injury or disease. Billings not submitted in the proper form must be returned to the medical provider within 20 days of receipt of the bill with a written explanation describing why the bill was not paid or what needs to be corrected. A request for chart notes on EDI billings must be made to the medical provider within 20 days of receipt of the bill. The number of days between the date the insurer returns the billing or requests for chart notes from the provider and the date the insurer receives the corrected billing or chart notes, shall not apply toward the 45 days within which the insurer is required to make payment.

(a) The insurer must retain a copy of each medical provider's bill received by the insurer or must be able to reproduce upon request data relevant to the bill, including but not limited to, provider name, date of service, date the insurer received the bill, type of service, billed amount, coding submitted by the medical provider as described in OAR 436-009-0010(2), 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.

(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. 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. OAR 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

436-009-0040
Calculating Medical Provider Fees

(1) The insurer must pay for medical services at the provider's usual fee or in accordance with the fee schedule whichever is less. Insurers must pay for medical services that have no fee schedule at the provider's usual fee. For all MCO enrolled claims, the insurer must pay for medical services at the provider's usual fee or according to the fee schedule, whichever is less, unless otherwise provided by MCO contract. Where 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.

(2)(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 OAR 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.

(3) 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.

(4) 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

436-009-0070
Oregon Specific Code, Other Services

(1) Except for records required in OAR 436-009-0010(3), copies of requested medical records shall be paid under OSC-R0001.

(2) A brief narrative by the attending physician or authorized nurse practitioner, including a summary of treatment to date and current status, and, if requested, brief answers to one to five specific questions related to the attending physician's or authorized nurse practitioner's current or proposed treatment, shall be paid under OSC-N0001.

(3) A complex narrative by the attending physician or authorized nurse practitioner, may include past history, history of present illness, attending physician's or authorized nurse practitioner's treatment to date, current status, impairment, prognosis, and medically stationary information, shall be paid under OSC-N0002.

(4) Fees for a PCE and a WCE shall be based upon the type of evaluation requested. The description of each level of evaluation and the maximum allowable payment shall be as follows:

(a) FIRST LEVEL PCE: This is a limited evaluation primarily to measure musculoskeletal components of a specific body part. These components include such tests as active range of motion, motor power using the 5/5 scale, and sensation. This level requires not less than 45 minutes of actual patient contact. A first level PCE shall be paid under OSC-99196 which includes the evaluation and report. Additional 15-minute increments may be added if multiple body parts are reviewed and time exceeds 45 minutes. Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report.

(b) SECOND LEVEL PCE: This is a PCE to measure general residual functional capacity to perform work or provide other general evaluation information, including musculoskeletal evaluation. It may be used to establish Residual Functional Capacities for claim closure. This level requires not less than two hours of actual patient contact. The second level PCE shall be paid under OSC-99197 which includes the evaluation and report. Additional 15 minute increments may be added to measure additional body parts, to establish endurance and to project tolerances. Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report.

(c) WCE: This is a residual functional capacity evaluation which requires not less than 4 hours of actual patient contact. The evaluation may include a musculoskeletal evaluation for a single body part. A WCE shall be paid under OSC-99198 which includes the evaluation and report. Additional 15 minute increments (per additional body part) may be added to determine endurance (e.g. cardiovascular) or to project tolerances (e.g., repetitive motion). Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report. Special emphasis should be given to:

(A) The ability to perform essential physical functions of the job based on a specific job analysis as related to the accepted condition;

(B) The ability to sustain activity over time; and

(C) The reliability of the evaluation findings.

(5) When an attorney requires a consultation with a medical provider, the medical provider shall bill under OSC-D0001.

(6) When an insurer requires a consultation with a medical provider, the medical provider shall bill under OSC-D0030.

(7) The fee for a deposition shall be billed under OSC-D0002. This code should include time for preparation, travel and deposition. Upon request of one of the parties, the director may limit payment of the provider's hourly rate to a fee charged by similar providers.

(8) When an insurer obtains an Independent Medical Examination (IME):

(a) The medical service provider doing the IME shall bill under OSC-D0003. This code shall be used for a report, file review or examination;

(b) If the insurer asks the medical service provider to review the IME report and respond, the medical service provider shall bill for the time spent reviewing and responding using OSC-D0019. Billing should include documentation of time spent.

(9) The fee for interpretive services shall be billed under OSC-D0004.

(10) Fees for all arbiters and panel of arbiters used for director reviews pursuant to OAR 436-030-0165 shall be established by the director. This fee determination will be based on the complexity of the examination, the report requirements and the extent of the record review. The level of each category is determined by the director based on the individual complexities of each case as compared to the universe of claims in the medical arbiter process. When the examination is scheduled, the director shall notify the medical arbiter and the parties of the authorized fee for that medical arbiter review based on a combination of separate components.

Level 1 OSC-AR001 Exam
Level 2 OSC-AR002 Exam
Level 3 OSC-AR003 Exam
Limited OSC-AR004 Exam
As determined by the director, a level 1 exam generally involves a basic medical exam with no complicating factors. A level 2 exam generally involves a moderately complex exam and may have complicating factors. A level 3 exam generally involves a very complex exam and may have several complicating factors. A limited exam generally involves a newly accepted condition, or some other partial exam.
Level 1 OSC-AR011 Report
Level 2 OSC-AR012 Report
Level 3 OSC-AR013 Report
As determined by the director, a level 1 report generally includes standard questions. A level 2 report generally includes questions regarding complicating factors. A level 3 report generally includes questions regarding multiple complicating factors.
Level 1 OSC-AR021 File Review
Level 2 OSC-AR022 File Review
Level 3 OSC-AR023 File Review
Level 4 OSC-AR024 File Review
Level 5 OSC-AR025 File Review As determined by the director, a level 1 file review generally includes review of a limited record. A level 2 file review generally includes review of an average record. A level 3 file review generally includes review of a large record or disability evaluation without an exam. A level 4 file review generally includes an extensive record. A level 5 file review generally includes an extensive record with unique factors.

(a) The director will notify the medical arbiter and the insurer of the approved code for each component to establish the total fee for the medical arbiter review. If a worker fails to appear for a medical arbiter examination without giving each medical arbiter at least 48 hours notice, each medical arbiter shall be paid at 50 percent of the examination or testing fee. A medical arbiter must also be paid for any file review completed prior to cancellation.

(b) If the director determines that a supplemental medical arbiter report is necessary to clarify information or address additional issues, an additional report fee may be established. The fee is based on the complex-

ity of the supplemental report as determined by the director. The additional fees are established as follows:

Limited OSC-AR031
Complex OSC-AR032

(c) Prior to completion of the reconsideration process, the medical arbiter may request the director to redetermine the authorized fee by providing the director with rationale explaining why the physician believes the fee should be different than authorized.

(d) The director may authorize testing which shall be paid according to OAR 436-009.

(e) Should an advance of costs be necessary for the worker to attend a medical arbiter exam, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(11) A single physician selected under ORS 656.327 or 656.260, to review treatment, perform reasonable and appropriate tests, or examine the worker, and submit a report to the director shall be paid at an hourly rate up to a maximum of 4 hours for record review and examination.

(a) The physician will be paid for preparation and submission of the report. Billings for services by a single physician shall be billed under OSC-P0001 for the examination and under OSC-P0003 for the report.

(b) Physicians selected under OAR 436-010-0008, to serve on a panel of physicians shall each receive payment based on an hourly rate up to a maximum of 4 hours for record review and panel examination. Each physician shall bill for the record review and panel examination under OSC-P0002. The panel member who prepares and submits the panel report shall receive an additional payment under OSC-P0003.

(c) The director may in a complex case requiring extensive review by a physician pre-authorize an additional fee. Complex case review shall be billed under OSC-P0004.

(d) If a worker fails to appear for a director required examination without providing the physician with at least 48 hours notice, each physician shall bill under OSC-P0005. The insurer must pay the physician for the appointment time and any time spent reviewing the record completed prior to the examination time. The billing must document the physician's time spent reviewing the record.

(e) Should an advance of costs be necessary for the worker to attend an exam under ORS 656.327 or 656.260, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(12) The fee for a Worker Requested Medical Examination shall be billed under OSC-W0001. This code shall be used for a report, file review, or examination.

(13) The table below lists the Oregon Specific Codes for Other Services. [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-009-0090
Pharmacy Fees

(1) Except for in-patient hospital charges, the insurer must pay for prescription medications at the provider's usual rate or the maximum allowable fee set by this rule, whichever is lower.

(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 prescription 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

436-015-0005
Definitions

Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS chapter 656 and OAR 436-010-0005 are hereby incorporated by reference and made a part of these rules.

(1) "Group of medical service providers" means individuals duly licensed to practice one or more of the healing arts who join together to provide managed medical services through a managed care organization, whether or not such providers have an ownership interest in the managed care organization.

(2) "GSA" means a geographic service area.

(3) "Health Care Provider" means an entity or group of entities, organized to provide health care services or organized to provide administrative support services to those entities providing health care services. An entity solely organized to become an MCO under these rules is not, in and of itself, a health care provider.

(4) "Managed Care Organization" or "MCO" means an organization formed to provide medical services and certified in accordance with these rules.

(5) "Non-qualifying employer" means either:

(a) An insurer qualified under ORS 656.005(14), with respect to managed care services to be provided to any subject worker; or,

(b) An employer as defined under ORS 656.005(13), other than a health care provider, with respect to managed care services to such employer's employees.

(6) "Primary Care Physician" means a physician qualified to be an attending physician according to ORS 656.005(12)(b)(A) and who is a general practitioner, family practitioner, or internal medicine practitioner.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260, OL 2007 Ch. 423
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 4-1991, f. & cert. ef. 6-14-91; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 4-2006(Temp), f. 5-11-06, cert. ef. 6-1-06 thru 11-27-06; WCD 7-2006, f. 10-19-06, cert. ef. 11-28-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-015-0009
Formed/Owned/Operated

(1) No MCO formed, owned, or operated by a non-qualifying employer will be certified as an MCO.

(2) For purposes of this rule, factors which may be considered in determining that an MCO is or will be formed by a non-qualifying employer may include, but are not limited to, the following:

(a) Whether a non-qualifying employer or any member of its staff directly participates in the formation, certification, or incorporation of the MCO;

(b) Whether a non-qualifying employer or any member of its staff selects, nominates, assumes a position as, or acts in the role of, a director, officer, agent, or employee of the MCO; or

(c) Whether a non-qualifying employer, or any member of its staff, arranges for, lends, guarantees, or otherwise provides financing for any of the organizational costs of the MCO.

(3) For the purposes of this rule, factors which must exist for the director to conclude that an MCO is or will be owned by a non-qualifying employer may include but are not limited to the following:

(a) Whether a non-qualifying employer or any member of its staff or of their immediate family arranges for, lends, guarantees, or otherwise provides financial support to the MCO. For purposes of this rule, financial support does not include contracted fees for services rendered by an MCO; or

(b) Whether a non-qualifying employer or any member of its staff or of their immediate family has any ownership or similar financial interest in or right to payment from the MCO.

(4) For purposes of this rule, factors which must exist for the director to conclude that an MCO is or will be operated by a non-qualifying employer may include, but are not limited to, the following:

(a) Whether a non-qualifying employer or any member of its staff makes or exercises any control over business, operational, or policy decisions of the MCO;

(b) Whether a non-qualifying employer or any member of its staff possesses or controls the ownership of voting securities of the MCO. Possession or control shall be presumed to exist if any person, directly or indirectly, holds the power to vote or holds proxies of any other person representing ten percent or more of the voting securities of the MCO;

(c) Whether a non-qualifying employer or any member of its staff provides MCO services other than as allowed by section (6) of this rule;

(d) Whether an MCO contracts exclusively with a single insurer to provide the MCO with business. An MCO will have up to one year from the effective date of its first contract to obtain contracts with more than one insurer. If the MCO has not obtained additional contracts within this time period, the MCO must provide the director with a report documenting its efforts to obtain additional contracts;

(e) Whether a non-qualifying employer, or any member of its staff, enters into any contract with the MCO that limits the ability of the MCO to accept business from any other source; or

(f) Whether a non-qualifying employer, or any member of its staff, directs or interferes with the MCO's delivery of medical and health care services.

(5) For purposes of this rule, "staff" is any individual who is a regular employee of a non-qualified employer or of any parent or subsidiary entity of a non-qualified employer.

(6) Notwithstanding the provisions of sections (2), (3), and (4) of this rule, an MCO may contract with an insurer to provide certain managed care services. However, such insurer-provided services must be in accordance with protocols and standards established by the certified MCO program and approved by the director. For purposes of this rule, the insurer cannot provide or participate in provision of managed care services related to dispute resolution, service utilization review, or physician peer review.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-015-0010
Notice of Intent to Form

Any health care provider or group of medical service providers initiating an MCO pursuant to ORS 656.260, must submit a "Notice of Intent to Form" to the division, by certified mail, in a form prescribed by the director. The notice must include but is not limited to the following:

(1) Identity of the person or persons who participate in discussions intended to result in the formation of an MCO. If the person is a member of a closely held corporation, the notice should include the identity of the shareholders.

(2) The name, address, and telephone number of a contact person.

(3) A synopsis of the information which will be shared in discussions preceding the application for MCO certification.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-015-0020
Qualifying

(1) Any health care provider or group of medical service providers as defined in these rules must qualify as an MCO prior to submission of an application for certification. To qualify, the applicant must:

(a) Submit a proposed plan for the MCO to the administrator of the Workers' Compensation Division in which the applicant outlines the manner in which the proposed MCO will meet the requirements of ORS 656.260 and OAR 436-015-0030;

(b) Identify in the plan the specific persons to be directors of the proposed MCO, the person to be the president of the proposed MCO, the title and name of the person to be the day-to-day administrator of the MCO, and the title and name of the person to be the administrator of the financial affairs of the proposed MCO; and

(c) Provide affidavits signed by each person identified in subsection (1)(b) above which certifies that the individual has no interest in an insurance company pursuant to OAR 436-015-0009.

(2) If the proposed plan for the MCO is approved by the director, the applicant shall be authorized to proceed to acquire the necessary services to meet the certification requirements.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 4-1991, f. & cert. ef. 6-14-91; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-015-0030
Applying for Certification

(1) A health care provider or group of medical service providers applying for certification as an MCO must submit to the director the following:

(a) One copy of an application which includes specific information indicating the manner in which the MCO will be able to meet the provisions of these rules;

(b) A non-refundable fee of $1,500 which will be deposited in the Department of Consumer and Business Services Fund; and

(c) The approved MCO plan.

(2) The MCO shall provide a description of the initial GSA. The GSA shall be designated by a listing of the postal zip codes in the service area.

(3) The MCO plan shall provide a description of the times, places, and manner of providing services under the plan adequate to ensure that workers governed by the MCO shall be able to:

(a) Access an MCO provider panel with a minimum of one attending physician within the MCO for every 1,000 workers covered by the plan;

(b) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner within 24 hours of the MCO's knowledge of the need or a request for treatment;

(c) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO;

(d) Receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization;

(e) Receive information on a 24-hour basis regarding medical services available within the MCO which shall include the worker's right to receive emergency or urgent care, and the hours of regular MCO operation if assistance is needed to select an attending physician or answer other questions;

(f) Seek treatment from any category of medical service provider as defined in subsection (6)(a) of this rule and have a choice of at least 3 medical service providers within each category. The worker shall also have at least 3 choices, as needed, of ancillary service providers including, but not limited to, physical therapists and psychologists. Treatment by all medical service providers including attending physicians will be governed by the MCO treatment standards and protocols;

(g) Access medical providers, including attending physicians, within a reasonable distance from the worker's place of employment, considering the normal patterns of travel. For purposes of this rule, 30 miles (one way)

in urban areas and 60 miles (one way) in rural areas will be considered a reasonable distance;

(h) Receive treatment by a non-MCO medical service provider when the enrolled worker resides outside the MCO's geographical service area. Such workers may only select non-MCO providers if they practice closer to the worker's residence than an MCO provider of the same category and if they agree to the terms and conditions of the MCO;

(i) Receive services that meet quality, continuity, and other treatment standards which will provide all medical and health care services in a manner that is timely, effective, and convenient for the worker; and

(j) Receive specialized medical services the MCO is not otherwise able to provide. The application must include a description of the times, places, and manner of providing such specialized medical services.

(4) The MCO plan must provide a procedure which allows for workers to receive compensable medical treatment from a primary care physician or authorized nurse practitioner who is not a member of the MCO. The procedure must identify the criteria the MCO will use for approval or disapproval of such treatment, and provide written notice of the MCO physician qualification procedures to the worker.

(5) The MCO shall provide:

(a) Copies of contract agreement(s) or other documents signed by the MCO and each participating medical service provider/health care provider representative which verify membership; and

(b) A list of the names, addresses, and specialties of the individuals who will provide services under the managed care plan together with appropriate evidence of any licensing, registration or certification requirements for that individual to practice. This list shall indicate which medical service providers will act as attending physicians in each GSA within the MCO.

(6) The MCO plan shall provide:

(a) An adequate number of medical service providers from each provider category. For purposes of these rules, the categories include acupuncturist, chiropractor, dentist, naturopath, optometrist, osteopath, physician, and podiatrist, as listed in ORS 676.110. The requirements of this section must be met unless the MCO shows evidence that the minimum number is not available within a GSA.

(b) A process that allows workers to select a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010. If the MCO has fewer than three authorized nurse practitioners from which workers can choose within a GSA, the MCO must allow workers to seek treatment outside the MCO from authorized nurse practitioners, consistent with the MCO's treatment and utilization standards. Treatment must also be consistent with ORS 656.245(2)(b)(C), which limits the authorization of treatment of the worker by a nurse practitioner to 90 days and authorization of payment of temporary disability benefits for a period not to exceed 60 days from the date of the first visit on the initial claim. Such authorized nurse practitioners are not themselves bound by the MCO's treatment and utilization standards; however, workers are subject to those standards.

(c) A program which specifies the criteria for selection and de-selection of physicians and the process for peer review. The processes for terminating a physician and peer review shall provide for adequate notice and hearing rights for any physician.

(7) The MCO plan must provide adequate methods for monitoring and reviewing contract matters between its providers and the MCO to ensure appropriate treatment or to prevent inappropriate or excessive treatment including but not limited to:

(a) A program of peer review and utilization review to prevent inappropriate or excessive treatment including, but not limited to, the following:

(A) A pre-admission review program of elective admissions to the hospital and of elective surgeries.

(B) Individual case management programs, which identify ways to provide appropriate care for less money for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care.

(C) Physician profile analysis which may include such information as each physician's total charges, number and costs of related services provided, time loss of claimant, and total number of visits in relation to care provided by other physicians to patients with the same diagnosis. A physician's profile shall not be released to anyone outside the MCO without the physician's specific written consent except that the physician's profile shall be released to the director without the necessity of obtaining such consent.

(D) Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary.

(E) Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate.

(F) Second surgical opinion programs which allow workers to obtain the opinion of a second physician when elective surgery is recommended. Second surgical opinions must be required prior to repeat surgeries.

(b) A quality assurance program which includes, but is not limited to:

(A) A system for resolution and monitoring of problems and complaints which includes, but is not limited to, the problems and complaints of workers and medical service providers;

(B) Physician peer review which shall be conducted by a group designated by the MCO or the director and which must include, but is not limited to, members of the same healing art in which the physician practices;

(C) A standardized claimant medical record keeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance.

(c) A program for monitoring and reviewing other contract matters that meets the requirements of ORS 656.260(4) and which are not covered under peer review, service utilization review, dispute resolution, and quality assurance.

(8) The MCO plan must include a procedure for internal dispute resolution to resolve complaints by enrolled injured workers, medical providers, and insurers in accordance with OAR 436-015-0110. The internal dispute resolution procedure shall include a provision allowing the waiver of the time period to appeal a decision to the MCO upon a showing of good cause.

(9) The MCO plan must include a summary of the process used by the MCO to develop and review treatment standards, protocols, and guidelines. This summary must include, but is not limited to:

(a) A description of the medical expertise or specialties of the clinicians involved;

(b) A description regarding what the protocols and guidelines are based on;

(c) The criteria used by the MCO in selecting the conditions for which the MCO implements treatment protocols and guidelines;

(d) A description of the criteria used by the MCO to determine when it needs to review or revise its treatment standards, protocols, and guidelines;

(e) How the MCO makes the standards, protocols, and guidelines available to its panel providers and how it notifies them of any changes;

(f) Sufficient flexibility to allow treatment outside the standards, protocols, and guidelines if such treatment is supported by persuasive professional medical judgment and reasoning; and

(g) A description of how the MCO will ensure the worker continues to receive appropriate care in a timely, effective and convenient manner throughout the dispute resolution process.

(10) The MCO plan shall provide other programs that meet the requirements of ORS 656.260(4) including:

(a) A program involving cooperative efforts by the workers, the employer, the insurer, and the MCO to promote early return to work for enrolled injured workers; and

(b) A program involving cooperative efforts by the workers, the employer, and the MCO to promote workplace safety and health consultative and other services. The program shall include:

(A) Identification of how the MCO will promote such services.

(B) A method by which the MCO will report to the insurer within 30 days of knowledge of occupational injuries and illnesses involving serious physical harm as defined by OAR 437-001, occupational injury and illness trends as observed by the MCO, and any observations that indicate an injury or illness was caused by a lack of diligence of the employer.

(C) A method by which an MCO's knowledge of needed loss control services will be communicated to the insurer for determining the need for services as detailed in OAR 437-001.

(D) A provision that all notifications to the insurer from the MCO shall be considered as a request to the insurer for services as detailed in OAR 437-001.

(E) A provision that the MCO shall maintain complete files of all notifications for a period of 3 years following the date that notification was given by the MCO.

(11) The MCO shall establish one place of business in this state where the organization administers the plan, keeps membership records and other records as required by OAR 436-015-0050.

(12) The MCO plan must include a procedure for timely and accurate reporting to the director necessary information regarding medical and

health care service costs and utilization in accordance with OAR 436-015-0040 and OAR 436-009.

(13) The MCO shall designate an in-state communication liaison for the department and the insurers at the MCO's established in-state location. The responsibilities of the liaison shall include, but not be limited to:

(a) Coordinating and channeling all outgoing correspondence and medical bills;

(b) Unless otherwise provided by the MCO contract, providing centralized receipt and distribution of all reimbursements back to the MCO members and primary care physicians; and

(c) Serving as a member on the quality assurance committee.

(14) The MCO must provide satisfactory evidence of ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan.

(15) The MCO plan shall describe the reimbursement procedures for all services provided in accordance with the MCO plan. The members must comply with the following billing and report processing procedures:

(a) Submit all bills in accordance with the MCO contract with the insurer.

(b) Submit all reports and related correspondence to the insurer's authorized claims processing location with copies to the MCO in-state communication liaison or as otherwise provided by the contract.

(16) The MCO plan shall provide a procedure within the MCO plan to provide financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(17) The MCO plan must describe how the MCO will provide insurers with information that will inform workers of all choices of medical service providers within the plan and how workers can access those providers.

(18) Within 45 days of receipt of all information required for certification, the director shall notify the applicant of the effective date of the certification and the initial geographical service area of the MCO. If the certification is denied, the applicant will be provided with the reason therefore.

(19) The application for certification for an MCO shall not be approved if the MCO fails to meet the requirements of these rules.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260 (OL 2007 Ch. 423)

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 4-2006(Temp), f. 5-11-06 thru 11-27-06, cert. ef. 6-1-06; WCD 7-2006, f. 10-19-06, cert. ef. 11-28-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-015-0040

Reporting Requirements for an MCO

(1) In order to ensure the MCO complies with the requirements of these rules, each MCO shall provide the director with a copy of the entire text of any MCO/insurer contract agreement, signed by the insurer and the MCO, within 30 days of execution of such contracts. Amendments, addendums, and cancellations, together with the entire text of the underlying contracts, shall be submitted to the director within 30 days of execution.

(2) Notwithstanding section (1), when an MCO/insurer contract agreement contains a specific expiration or termination date, the MCO must provide the director with a copy of a contract extension, signed by the insurer and MCO, no later than the contract's date of expiration or termination, or workers will no longer be subject to the contract after it expires or terminates without renewal pursuant to ORS 656.245(4)(a).

(3) Any amendment to the approved MCO plan must be submitted to the director for approval. The MCO shall not take any action based on the amendment until the amended plan is approved.

(4) Within 45 days of the end of each calendar quarter, each MCO shall provide the following information, current on the last day of the quarter, in a form and format as prescribed by the director: specify quarter being reported, MCO certification number, membership listings by category of medical service provider (in coded form), including provider names, specialty (in coded form), Tax ID number, National Provider Identifier (NPI) number, business address and phone number. (All fields are required unless specifically excepted by bulletin.) When a medical provider has multiple offices, only one office location in each geographical service area needs to be reported. In addition, the updated membership listing shall include the names and addresses of all health care providers participating in the MCO.

(5) By April 30 of each year, each MCO shall provide the director with the following information for the previous calendar year:

(a) A summary of any sanctions or punitive actions taken by the MCO against its members;

(b) A summary of actions taken by the MCO's peer review committee; and

(c) An affidavit that the approved MCO plan is consistent with the MCO's business practices, and that any amendments to the plan have been approved by the director.

(6) An MCO must report any new board members or shareholders to the director within 14 days of such changes. These parties must submit affidavits certifying they have no interest in an insurer or other non-qualifying employer as described under OAR 436-015-0009.

(7) Nothing in this rule limits the director's ability to require information from the MCO as necessary to monitor the MCO's compliance with the requirements of these rules.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260, OL 2007 Ch. 423

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 13-1992, f. & cert. ef. 9-21-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 4-2006(Temp), f. 5-11-06, cert. ef. 6-1-06 thru 11-27-06; WCD 7-2006, f. 10-19-06, cert. ef. 11-28-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-015-0110

Dispute Resolution/Complaints of Rule Violation

(1) Disputes which arise between any party and an MCO shall first be processed through the dispute resolution process of the MCO.

(2) The MCO shall promptly provide a written summary of the MCO's dispute resolution process to anyone who requests it, or to any party or their representative disputing any action of the MCO or affected by a dispute. The written summary shall include at least the following:

(a) The title, address, and telephone number of the contact person at the MCO who is responsible for the dispute resolution process;

(b) The types of issues the MCO will consider in its dispute resolution process;

(c) A description of the procedures and time frames for submission, processing, and decision at each level of the dispute resolution process including the right of an aggrieved party to request administrative review by the director if the party disagrees with the final decision of the MCO; and

(d) Advise that absent a showing of good cause, failure to timely appeal to the MCO shall preclude appeal to the director.

(3) Notification must be provided to the worker and the worker's attorney when the MCO:

(a) Receives any complaint or dispute pursuant to this rule; or

(b) Issues any decision pursuant to this rule.

(4) Whenever an MCO denies a service, or a party otherwise disputes a decision of the MCO, the MCO shall send written notice of its decision to all parties that can appeal the decision. If the MCO provides a dispute resolution process for the issue, the notice shall include the following paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: If you want to appeal this decision, you must notify us in writing within 30 days of the mailing date of this notice. Send a written request for review to: {MCO name and address}. If you have questions, contact {MCO contact person and phone number}. If you do not notify us in writing within 30 days, you will lose all rights to appeal the decision. If you appeal timely, we will review the disputed decision and notify you of our decision within 60 days of your request. Thereafter, if you continue to disagree with our decision, you may appeal to the director of the Department of Consumer and Business Services (DCBS) for further review. If you fail to seek dispute resolution through us, you will lose your right to appeal to the director of DCBS.

(5) If an MCO receives a complaint or dispute which is not included in the MCO dispute resolution process, the MCO shall, within seven days from the date of receiving the complaint, notify the parties in writing of their right to request review by the director pursuant to OAR 436-015-0008. The notice shall include the following paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: The issue you have raised is not a matter which we handle. To pursue this issue, you must request administrative review of the issue by the director of the Department of Consumer and Business Services (DCBS). Send written requests for review to: DCBS, Workers' Compensation Division, Medical Section, 350 Winter Street NE, PO Box 14480, Salem, OR 97309-0405. If you do not notify DCBS in writing within 60 days of the mailing date of this notice, you will lose all rights to appeal the decision. For assistance, you may call the Workers Compensation Division's toll-free hotline at 1-800-452-0288 and ask to speak with a Benefit Consultant.

(6) The time frame for resolution of the dispute by the MCO shall not exceed 60 days from the date of receipt of the dispute by the MCO until issuance of the final decision by the MCO. After the MCO resolves a dispute pursuant to ORS 656.260(14), the MCO shall notify all parties to the dispute in writing, including the worker's attorney where written notification has been provided by the attorney with an explanation of the reasons for the decision. This notice shall inform the parties of the next step in the process, including the right of an aggrieved party to seek administrative

review by the director pursuant to OAR 436-015-0008. The notice shall include the following paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: If you want to appeal this decision, you must notify the director of the Department of Consumer and Business Services (DCBS) in writing within 60 days of the mailing date of this notice. Send written requests for review to: Department of Consumer and Business Services, Workers' Compensation Division, Medical Section, 350 Winter Street NE, PO Box 14480, Salem, OR 97309-0405. If you do not notify DCBS in writing within 60 days, you will lose all rights to appeal the decision. For assistance, you may call the Workers Compensation Division's toll-free hotline at 1-800-452-0288 and ask to speak with a Benefit Consultant.

(7) If the MCO fails to issue a decision within 60 days, the MCO's initial decision is automatically deemed affirmed. The parties may immediately proceed as though the MCO had issued an order affirming the MCO decision. The MCO shall notify the parties of the next step in the process, including the right of an aggrieved party to seek administrative review by the director pursuant to OAR 436-015-0008 including the appeal rights provided in (6) above.

(8) The director may assist in resolution of a dispute before the MCO. The director may issue an order to further the dispute resolution process. Any of the parties also may request in writing that the director assist in resolution if the dispute cannot be resolved by the MCO.

(9) Complaints pertaining to violations of these rules must be directed to the division.

(10) The division may investigate the alleged rule violation. The investigation may include, but shall not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the complaint, or consultation with an appropriate committee of the medical provider's peers, chosen in the same manner as provided in OAR 436-010-0330.

(11) If the division determines upon completion of the investigation that there has been a rule violation, the division may issue penalties pursuant to ORS 656.745 and OAR 436-015-0120.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-030-0003
Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration received by the department on or after the effective date of these rules.

(2) All orders issued by the division to carry out the statute and these rules are considered an order of the director.

(3) These rules take the place of the rules adopted on January 2, 2008, by Workers' Compensation Division Administrative Order 07-059, and carry out ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.277, 656.278, and 656.325.

(a) For claims in which the worker became medically stationary prior to July 2, 1990 OAR 436-030-0020, 436-030-0030, and 436-030-0050 as adopted by WCD Administrative Order 13-1987 effective January 1, 1988 will apply.

(b) OAR 436-030-0055(3)(b), (3)(d) and (4)(a) apply to all claims with dates of injury on or after January 1, 2002.

Stat. Auth.: ORS 656.268, 656.726
Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, 656.268, 656.273, 656.277, 656.325, 656.726
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0003, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1991(Temp), f. 8-20-91, cert. ef. 9-1-91; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 12-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 6-29-01; Administrative correction 11-20-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 4-2002, f. 4-5-02, cert ef. 4-8-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-040-0003
Applicability of Rules

(1) These rules are effective July 1, 2008, and apply to all applications for relief submitted prior to May 1, 1990 and all requests for reimbursement from the Workers with Disabilities Program filed with the director on or after July 1, 2008 for injuries occurring on or after November 1, 1981.

(2) These rules carry out the provisions of ORS 656.628.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.236, §286, ch. 70, OL 2007
Hist.: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82; WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84; Renumbered from 436-064-0003, 5-1-85; WCD 6-1987, f. 12-18-87, ef. 1-1-88; WCD 3-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 6-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 22-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-045-0003
Applicability of Rules

(1) These rules are effective July 1, 2008, and apply to all requests for reimbursement from the Reopened Claims Program.

(2) These rules apply to all awards ordered on claims opened by the Board under ORS 656.278 on or after January 1, 1988 and all voluntary claim reopenings on or after January 1, 2002.

(3) These rules carry out the provisions of ORS 656.625.

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.625
Stats. Implemented: ORS 656.236, 656.289 & 656.625
Hist.: WCD 8-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 27-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 9-1991, f. 12-13-91, cert. ef. 1-1-92; WCD 13-1997, f. 12-4-97, cert. ef. 1-1-98; WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0002
Purpose

The purpose of these rules is to carry out the Workers' Compensation Law related to employers' and insurers' responsibilities to cover subject workers for compensable injuries and illnesses.

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.017
Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCB 2-1976(Admin) (Temp), f. & ef. 4-12-76; WCB 3-1976(Admin), f. & ef. 6-15-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0008; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0003
Applicability of Rules

(1) These rules are effective July 1, 2008, to carry out the provisions of:

(a) ORS 656.017 — Employer required to pay compensation and perform other duties.

(b) ORS 656.029 — Independent contractor status.

(c) ORS 656.126 — Coverage while temporarily in or out of state.

(d) ORS 656.407 — Qualifications of insured employers.

(e) ORS 656.419 — Guaranty contracts.

(f) ORS 656.423 — Cancellation of coverage by employer.

(g) ORS 656.427 — Termination of guaranty contract or surety bond liability by insurer.

(h) ORS 656.430 — Certification of self-insured employer.

(i) ORS 656.434 — Certification effective until canceled or revoked; revocation of certificate.

(j) ORS 656.443 — Procedure upon default by employer.

(k) ORS 656.447 — Sanctions against insurer for failure to comply with contracts, orders or rules.

(l) ORS 656.455 — Records location and inspection.

(m) ORS 656.745 — Civil penalties.

(n) ORS 656.850 and 656.855 — Worker leasing companies.

(o) ORS 731.475 — Insurer's in-state location.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.704 and 656.726(4)
Stats. Implemented: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, 731.475
Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0003, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0005
Definitions

For the purpose of these rules unless the context requires otherwise:

(1) "Audited Financial Statement" means a financial statement audited by an outside accounting firm.

(2) "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.

(3) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(4) "Complete Records" means written records required to be kept in Oregon as described in OAR 436-050-0110 and 0120 and 436-050-0210 and 0220.

(5) "Controlling Person" means a person having substantial ownership or who is an officer or director of a corporation; a member or manager of a limited liability company; a partner of a partnership; or an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management, policies, or operation of a person offering worker leasing services.

(6) "Days" means calendar days unless otherwise specified.

(7) "Default" means failure of an employer, insurer or self-insured employer to pay the moneys due the director under ORS 656.506, 656.612 and 656.614 at such intervals as the director shall direct.

(8) "Department" means the Department of Consumer and Business Services.

(9) "Director" means the director of the Department of Consumer and Business Services or the director's delegate for the matter, unless the context requires otherwise.

(10) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(11) "Double Coverage" means more than one guaranty contract is on file with the director for the same period of time.

(12) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.

(13) "Governmental Subdivision" means cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 or regional council of governments created under ORS chapter 190.

(14) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(15) "Insurer" means a guaranty contract insurer.

(16) "Leased Worker" means any worker provided by a worker leasing company on other than a "temporary basis" as described in OAR 436-050-0420.

(17) "Person" means an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other business entity allowed to do business in the State of Oregon.

(18) "Premium" means the monetary consideration for an insurance policy.

(19) "Premium Assessments" means moneys due the director under ORS 656.612 and 656.614.

(20) "Process Claims" is the determination of compensability and management of compensation by an Oregon certified claims examiner. Although determining compensability and managing compensation must be done from within this state under ORS 731.475 and this definition, the act of making payment may be done from out-of-state as directed from the Oregon place of business.

(21) "Reinstatement" means the continuation of workers' compensation insurance coverage without a gap under a guaranty contract.

(22) "Self-Insured Employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

(23) "Self-Insured Employer Group" means five (5) or more employers certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 436-050-0260 through 436-050-0340.

(24) "State" means the State of Oregon.

(25) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all the owners, or ten percent, whichever is less.

(26) "Worker Leasing Company" means a "person," as described in section (17) of this rule, who provides workers, by contract and for a fee, as established in ORS 656.850.

(27) "Written" means that which is expressed in writing, including electronic transmission.

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.704 & 656.726(4)
Hist.: WCB 2-1976(Admin)(Temp), f. & ef. 4-12-76; WCB 3-1976(Admin), f. & ef. 6-15-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 1-1983(Admin), f. 6-30-83, ef. 7-1-83; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0005; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 3-2007(Temp), f. 5-31-07, cert. ef. 6-1-07 thru 11-27-07; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0008
Administrative Review and Contested Cases

(l) Any party as defined by ORS 656.005, including an Assigned Claims Agent pursuant to ORS 656.054, aggrieved by an action taken under these rules in which a worker's right to compensation or the amount thereof is directly in issue may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS Chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS Chapter 656.

(2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued under ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by sending a written request to the Workers' Compensation Division's administrator within 60 days after the order was mailed.

(3) A hearing will not be granted if the request:

(a) Fails to state the specific grounds for which the party contests the proposed order or assessment; or

(b) Is mailed or delivered to the administrator more than 60 days after the order was mailed.

(4) Under ORS 656.704(2), any party that disagrees with an action or order of the director or division under these rules, other than as described in section (2), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

(5) Any party described in section (1) aggrieved by an action taken under these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within 90 days of the contested action unless the director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

Stat. Auth: ORS 656.704, 656.726(4) & 656.745
Stats. Implemented: ORS 656.254, 656.735, 656.740, 656.745 & 656.750
Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0998, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-87; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0025
Service of the Notice of Civil Penalty Orders

When the director issues a civil penalty order, it will be served by certified mail, return receipt requested, or in any other manner provided by Oregon Rules of Civil Procedure (7)(D).

Stat. Auth: ORS 656.704, 656.726(4)
Stats. Implemented: ORS 656.704, 656.726, 656.740
Hist.: WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0045
Non-Subject Workers

(1) As used in ORS 656.027(1):

(a) "Private employment contract" means direct employment of the worker by the owner of the private home.

(b) As used in this rule, "owner of the private home" means any person who occupies and either owns, leases or rents the private home, or any person related by blood, marriage, or an Oregon registered domestic partnership to that person, or any person who by direction of that person or by order of a court has become responsible for managing the household affairs of that person.

(2) As used in ORS 656.027(19):

(a) "A person performing foster parent duties" means any person certified by the State Office for Services to Children and Families under ORS Chapter 418 as a foster parent, or any person employed by that person in the operation of a foster home as defined in ORS Chapter 418 and any rules promulgated there under.

(b) "A person performing adult foster care duties" means any person licensed by the Senior and Disabled Services Division or the Mental Health and Developmental Disability Services Division to operate an adult foster home, or any person employed by the operator to perform services of assistance to the residents of the adult foster home.

(3) As used in this rule, "adult foster home" means any family home or facility, licensed under ORS 443.705 to 443.825, in which room, board, and 24-hour care services are provided, for compensation, to five or fewer adults who are not related to the operator by blood or marriage.

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.027
Hist.: WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0050
Corporate Officers, Partnerships; Limited Liability Company Members; Subjectivity

(1) Pursuant to ORS 656.027, a corporation, limited liability company, or partnership must elect in writing to its insurer to provide workers' compensation coverage for otherwise nonsubject workers. Such election must be made at the inception of a coverage policy and remain in effect until a revised written designation is given to the insurer. A self-insured employer must file the election with the director. If an entity does not file its initial election, or is not in compliance pursuant to ORS 656.017 and 656.407, then those exempt individuals shall be determined in the following order:

(a) For a corporation:

(A) President;

(B) Secretary, if any;

(C) Vice President, if any;

(D) Secretary/Treasurer, if any;

(E) Treasurer, if any;

(F) All other officers, if any.

(b) For a limited liability company or partners of a partnership:

(A) The member or partner with the largest ownership interest;

(B) The next largest ownership interest.

(c) If there is more than one person or the ownership interest is the same in any of the offices listed in subsections (a) and (b) of this rule, the sequence of those persons will be determined by whose birthday falls earlier in a year.

(2) Noncomplying corporations, noncomplying limited liability companies, or noncomplying partnerships, regardless of the number of employees, are limited to two exempt officers, members, or partners to be determined in accordance with section (1) of this rule.

(3) For purposes of clarifying terms used in ORS 656.027:

(a) "Commercial harvest of timber" means all commercial activities relating to harvest of timber from a parcel of property including, but not limited to, road building, marking of trees to be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products.

(b) "Director" means a person elected or appointed to a corporation's board of directors in accordance with its articles of incorporation or bylaws.

(c) "Eligible officer" means a corporate officer who is also a director of the corporation and who has a substantial ownership interest in the corporation.

(d) "Eligible partner" or "eligible member" means a partner or member who has substantial ownership in the business entity.

(e) "Noncomplying" means an employing legal entity of subject workers which is in violation of ORS 656.017(1).

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.027
Hist.: WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0065, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 8-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0100
Cancellation of Coverage by Employer; Reinstatement of Guaranty Contract; Carrier Liability

(1) An employer may cancel coverage with an insurer under ORS 656.423.

(2) An insurer may terminate liability on its guaranty contract or surety bond by giving the employer and director notice of termination in accordance with ORS 656.427 and this rule.

(3) Notice to the employer for terminating an insurer's guaranty contract filed with the director must be in writing, must include a statement that the filing with the director will terminate, and must state the effective date of termination as allowed under ORS 656.427.

(4) The insurer bears the burden of proof establishing that a termination notice was mailed to an employer. The notice and proof of mailing must be made available in Oregon upon request.

(5) Notice to the director of termination of a guaranty contract can be provided separately under OAR 436-160 or under this rule; or in a list if filing by hard copy submission under this rule. The notice under this rule must:

(a) Be in writing;

(b) Clearly identify the insurer;

(c) Include the employer(s) legal name; Federal Employer Identification Number (FEIN) or other tax reporting number; and the effective date of termination; and

(d) Be mailed or delivered to the director within ten calendar days after the effective date of the termination.

(6) Failure to provide timely notice to the director of termination of an insurer's guaranty contract may result in civil penalties pursuant to ORS 656.745.

(7) A guaranty contract termination notice may be rescinded and the guaranty contract reinstated if there will not be a lapse in the employer's coverage. If there is a lapse in the employer's coverage and the insurer reestablishes a policy for the employer, the insurer must file a new guaranty contract which reports the effective date of the new coverage.

(8) Pursuant to ORS 656.427(5), an employer may give notice to the insurer seeking continued coverage. The notice must be given before the effective date of the insurer guaranty contract termination and must be in writing. The notice must at least include a statement that other coverage has not been obtained and that the employer intends to become insured under the plan as established in ORS 656.730. Further application by the employer is not required. Pursuant to ORS 656.427(5), the insurer so notified must then insure continuing coverage and may take the additional steps to transfer the risk to the plan.

(9) If two or more guaranty contracts are in effect for one employer for the same time period, the insurer filing the employer's most recent arrangement for coverage shall have responsibility for processing claims occurring during the time period.

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented:ORS 656.423, 656.427 (ch. 656, OL 2007
Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0120; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0110
Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon

(1) Every insurer that is authorized to issue workers' compensation coverage to subject employers as required by ORS Chapter 656 shall give the director notice of the location, mailing address, telephone number, and any other contact information in this state where the insurer processes claims and keeps written records of claims and guaranty contracts as required by ORS 731.475. The insurer must provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director. While the insurer may have more than one location in this state, the information provided to the director must reasonably lead an inquirer to a person who can respond to inquiries as to guaranty contract information and to access an in-state Oregon certified claims examiner who can respond within a reasonable time to specific claims processing inquiries. A response time of forty-eight (48) hours or less, not including weekends or legal holidays, would satisfy a reasonable expectation.

(2) Notice under section (1) of this rule shall be filed with the director within 30 days after the insurer becomes authorized and starts writing workers' compensation insurance policies for Oregon subject employers.

(3) If an insurer elects to use a service company to satisfy the purposes of ORS 731.475 with respect to all or any portion of its business, the insurer shall, prior to its effective date, file with the division a copy of the agreement between the insurer and each company, and shall give the division notice of the location and mailing address of each service company.

(4) For the purpose of this section, those activities conducted at designated in-state location(s) and by the authorized representative(s) of the insurer shall include, but need not be limited to:

(a) Processing and keeping complete records of claims for compensation;

(b) Responding to specific claims processing inquiries;

(c) Keeping records of payments for compensation;

(d) Keeping records in a written form, not necessarily original form, and making those records available upon request; and

(e) Accommodating periodic in-state audits by the director.

(5) If its place of business or that of a service company elected in lieu of an in-state place of business is changed, the insurer shall notify the director of the new location, mailing address, telephone number, and any other contact information of the place of business at least 30 days prior to the effective date of the change.

(6) When an insurer changes claims processing locations, service companies, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor. The insurer must also notify the director of which claims will be transferred. The notice to the director must include:

(a) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(b) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, and date of injury. The list should also include the employer number and claim file number assigned by the Workers' Compensation Division, if known.

(7) Records every insurer is required to keep in this state include all the written records of the insurer that show its insured employers have complied with ORS 656.017, including the records described by OAR 436-050-0120.

Stat. Auth.: ORS 731.475, 656.704 & 656.726(4)
Stats. Implemented: ORS 731.475
Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 6-1984(Admin), f. & ef. 9-14-84; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0205; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0120
Records Insurers Must Keep in Oregon; Removal and Disposition

(1) The records of claims for compensation that each insurer is required to keep in this state include:

(a) Written records used and relied upon in processing claims;

(b) A written record of all payments made as a result of any claim including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing; and

(c) A written record as to whether supplemental temporary disability benefits, as required under ORS 656.210(5) for workers employed in more than one job, were approved or denied.

(2) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(3) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(4) When a denied claim is found to be compensable, the records of such claim are thereafter subject to section (3) of this rule.

(5) Claims records may be destroyed when all potential for benefits to the injured worker is gone.

(6) The records relating to guaranty contracts that insurers are required to keep in the state include:

(a) A written record of each guaranty contract, termination, cancellation, reinstatement, and endorsement issued under the Workers' Compensation Law;

(b) Written records of premiums due and premiums collected by the insurer from its insured employers as a result of coverage issued under the Workers' Compensation Law; and

(c) Written records of all money due and all such money collected from insured employers for the director and required to be remitted to the director.

(7) If all remittances have been made, guaranty contract records may be disposed of after the end of three full calendar years following the calendar year in which the guaranty contract terminates.

Stat. Auth.: ORS 731.475, 656.704 & 656.726(4)
Stats. Implemented: ORS 731.475
Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0215; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0170
Excess Insurance Requirements

(1) A self-insured employer must have excess workers' compensation insurance coverage appropriate for the employer's potential liability under ORS 656.001 to 656.990 with an insurer authorized to do business in the state. The policy providing such coverage and any endorsements thereto must be filed with the director not later than 30 days after the date the coverage is effective. A self-insured public utility with assets in excess of $500 million as reflected by the employer's audited financial statement submitted in accordance with OAR 436-050-0160 or 436-050-0175, may obtain the required excess workers' compensation insurance coverage from an eligible surplus lines insurer.

(2) The excess insurance:

(a) Must include a provision for reimbursement to the director of all expenses paid by the director on behalf of the employer pursuant to ORS 656.614 and 656.443 in the same manner as if the director were the insured employer, subject to the policy limitations or amounts and limits of liability to the insured employer; and

(b) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled; and

(c) Coverage must be specific on a per occurrence basis; and

(d) Coverage may include aggregate excess insurance; and

(e) Coverage may include a deductible endorsement acceptable to the director.

(3) When an excess insurance policy is canceled by the excess insurer or the employer, a copy of such notice shall be filed with the director 30 days prior to the effective date of cancellation.

(4) Changes in the self-insured retention level and policy limits of the excess insurance require prior approval of the director. The director may require a reduction in the self-insured retention level or an increase in the policy limits. Those items considered in determining and approving the retention and limitation levels of the excess insurance will be the employer's:

(a) Financial status;

(b) Risk and exposure;

(c) Claim history; and

(d) The amount of the required security deposit.

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with an order of the director to the employer to reduce the self-insured retention level or increase the policy limitation or amounts and limits of liability of the excess insurance.

(6) Excess insurance obtained under this section does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS 656 and these rules. Regardless of the types and amounts of excess coverage a self-insured employer shall not transfer claims to the excess insurer(s) for processing.

(7) If a self-insured employer fails to comply with the requirements of this section, the employer's certification as a self-insured will be revoked. The employer will be given written notice of such revocation which will be effective 30 days from receipt of such notice. If the required excess insurance is obtained within the 30 days, the revocation is canceled and certification remains in effect.

Stat. Auth.: ORS 656.430, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.430
Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0315; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86;

WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0175
Annual Reporting Requirements

(1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer shall file annually with the director an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. A self-insured employer that is not a municipality must make the filing within 120 days of the fiscal year end and a self-insured employer that is a municipality must make the filing within 180 days of the fiscal year end. All financial statements and annual financial reports filed, as required by this section, shall be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true, accurate and presents the employer's financial condition and results of operations as of the date of the statement.

(2) Each self-insured employer shall submit an annual endorsement to their application for self-insurance in the form prescribed by the director. The endorsement shall be filed by March 1 of each year.

(3) Notwithstanding section (l) of this rule, the director may require an employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the employer's financial status.

(4) The self-insured employer shall report claim loss data necessary by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations and determining deposits.

(a) The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

(A) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period, and must be valued as of January 1 of the current year. Reports must include:

(i) Contract medical expenses;

(ii) Total medical deductible;

(iii) Number of claims for which the medical deductible is claimed;

(iv) For claims with incurred losses of $5,000 or less: total paid, outstanding reserves, and total incurred losses;

(v) Number of claims with incurred losses of $5,000 or less; and

(vi) For each claim with incurred losses exceeding $5,000: worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.

(B) A report of losses covering the self-insured period prior to the experience rating period. The report must list all open claims, and must be valued as of January 1 of the current year. The report must include:

(i) The worker's name, listed in alphabetical order;

(ii) Date of injury;

(iii) Claim number;

(iv) Total paid;

(v) Outstanding reserves; and

(vi) Total incurred losses.

(C) Identification of claims involving catastrophes, Workers with Disabilities Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.

(b) The director will, by bulletin, provide guidelines for self-insured employers and their authorized representatives to use in submitting the required data.

(c) Each self-insured city or county that is exempted from the security deposit requirements in accordance with ORS 656.407(3) and OAR 436-050-0185 shall, in addition to the above, provide the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.

(5) If a self-insured employer fails to comply with the requirements of sections (1), (2), (3) or (4) of this rule, the director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase their deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties for up to $250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification as a self-insured.

(6) To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine test audits. If a self-insured employer's total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth.: ORS 656.407, 656.430, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.407 & 656.430
Hist.: WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0190
Using Self-Insured Employers Surety Deposit/Self-Insured Employers Adjustment Reserve

(1) In the event a self-insured employer fails to or is unable to make all payments due under ORS Chapter 656, the director shall, on behalf of the employer, assure continued payments in accordance with ORS 656.407, 656.443 and 656.614 and in such a manner as to ensure minimum delay in the processing of injured workers' claims.

(2) If a self-insured employer defaults and is being serviced by one or more service companies, the director will, on behalf of the employer, designate those service companies to continue processing claims in accordance with the contracts in effect. At least 90 days prior to the time the contract expires, the service company can submit a proposal to continue processing the claims. The director will consider such proposal along with other options which may include referral of the claims for processing to an Assigned Claims Agent as secured under ORS 656.054.

(3) If a self-insured employer defaults and is self-administering, the director shall, on behalf of the employer, negotiate to have the employer's claims processed or may refer the claims for processing to an Assigned Claims Agent as secured under ORS 656.054.

(4) In the event a self-insured employer reorganizes its business, assumes additional liability, acquires new operations, buys an additional business, merges with another business, files bankruptcy, emerges from bankruptcy, or otherwise changes its operation in any manner that affects its workers' compensation claims liability, the self insured employer must notify the director of the modification of business within 30 days of the event.

(5) For the purposes of this rule:

(a) "Employer" includes employer groups.

(b) "Self-insured employer" includes self-insured employer groups.

Stat. Auth.: ORS 656.407, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.407, 656.443 & 656.614
Hist.: WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0322; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0200
Self-Insured Certification Cancellation; Revocation

(1) A certification to a self-insurer issued by the director remains in effect until:

(a) Revoked as provided by OAR 436-050-0150 through 436-050-0230 and ORS 656.440; or

(b) Canceled by the employer with the approval of the director.

(2) If a self-insured employer wishes to cancel certification as a self-insured or cancel self-insurance for any legal entity included under the self-insurance certification, the employer shall make written request to the director. Such a request shall be submitted at least 60 days prior to the desired date of cancellation and include:

(a) What arrangements have been made to process present and future claims for which the employer is responsible;

(b) A statement of all present and future claims liabilities for all liabilities incurred during the period of self-insurance; and

(c) Any reports and/or moneys due the director pursuant to ORS 656.506, 656.612, and 656.614.

(3) If the employer will continue to have subject workers after the cancellation date, the employer must provide the director, prior to the desired date of cancellation, one of the following:

(a) A proof of coverage filing under ORS 656.017 and 656.419;

(b) Evidence of a worker leasing arrangement as allowed under ORS 656.850; or

(c) An assigned risk binder that demonstrates compliance with ORS 656.052.

(4) If the self-insured employer fails to provide the director evidence of subsequent coverage under section (3) prior to the desired date of cancellation, the self-insurance certification, including reports and moneys due the director under ORS 656.506, 656.612, and 656.614, will remain in effect.

(5) If a guaranty contract is in effect and an active self insurance certification is on file with the director for the same employer for the same time period, the self insured employer shall have the responsibility of processing claims occurring during the time period as provided under the self insurance certification.

(6) The certification of a self-insured employer may be revoked if:

(a) The employer fails to comply with ORS 656.407 or 656.430 and the rules adopted pursuant thereto; or

(b) The employer commits any violation for which a civil penalty could be assessed under ORS 656.745.

(7) Except as provided in OAR 436-050-0170(7), notice of certificate revocation will be issued in accordance with the provision of ORS 656.440.

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.434 & 656.440
Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0325; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0210
Notice of Self-Insurer's Place of Business in State; Records Self-Insured Must Keep in Oregon

(1) Every employer certified as a self-insured employer shall give the director notice of location, mailing address, telephone number, and any other contact information of at least one location in this state where claims will be processed and claim records kept as well as other records as required by this rule and OAR 436-050-0220. The employer shall give notice of the location, mailing address, telephone number, and any other contact information upon application for certification.

(2) With the approval of the director, a self-insured employer may use one or more service companies as authorized by ORS 656.455 instead of establishing its own place of business in this state. To obtain approval or to change or add service locations, the employer shall file with the director a copy of the agreement entered into between the employer and each company, and shall give the director notice of the location, mailing address, telephone number, and any other contact information of each service company.

(3) For the purpose of this section, those activities conducted at designated in-state location(s) and by the authorized representative(s) of the self-insured employer shall include, but need not be limited to:

(a) Processing, and keeping complete records of, claims for compensation;

(b) Responding to specific claims processing inquiries;

(c) Keeping records of payments for compensation;

(d) Keeping of records in a written form, not necessarily original form, and making those records available upon request; and

(e) Accommodating periodic in-state audits by the director.

(4) If a self insured employer or service company for a self insured employer changes its place of business, the self insured employer shall notify the director of the new location, mailing address, telephone number, and any other contact information 30 days prior to the effective date of the change.

(5) When a self-insured employer changes claims processing locations, service companies, or self-administration, the employer must provide at least 10 days prior notice to:

(a) Workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor;

(b) The director of which claims will be transferred. The notice must include:

(A) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(B) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

(6) Written records every self-insured employer is required to keep in this state include, but are not limited to, the records described by OAR 436-050-0220.

(7) Notwithstanding section (1) of this rule, the director may approve up to two additional claims processing locations, if the self-insured employer can show:

(a) That meeting the requirements of section (1) of this rule will impose a financial or operational hardship on the employer;

(b) That such additional locations will result in improved claims processing performance of the employer; and

(c) That the auditing functions of the director can be met without unnecessary expense to the director.

(8) If, upon review of a self-insured employer's claims processing performance, the performance has not remained at the levels as described in OAR 436-060, approval for additional locations provided in section (6) shall be withdrawn.

(9) Notwithstanding section (1) of this rule, a self-insured employer may, with the prior approval of the director, make compensation payments from a single location other than the designated claims processing location. Approval of such a location may be revoked if at any time:

(a) Timeliness of compensation payment falls below the minimum standards as established in OAR 436-060;

(b) Written record of compensation payments is not available; or

(c) There is not sufficient written documentation to support the issuance of a check for compensation.

(10) Notwithstanding section (1) of this rule, a self-insured employer may, with prior approval of the director, have one additional location, in or out of state for maintaining payroll records pertaining to premium assessments and assessment/contributions.

Stat. Auth.: ORS 656.455, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.455
Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0330; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-050-0220
Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

(1) A self-insured employer must notify the director of the location, mailing address, telephone number, and any other contact information where records are or will be kept and where claims are or will be processed in Oregon. The self-insured employer must provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director. The written records self-insured employers are required to keep in this state to ensure compliance with ORS 656.506, 656.612, 656.614, and 656.622 include:

(a) A record of payroll by National Council on Compensation Insurance classification; and

(b) Complete records of all assessments, employer and employee contributions, and all such money due the director.

(2) The self-insured employer must maintain at a place of business in this state, those written records relating to their safety and health program as required by ORS 656.430(10) and in accordance with OAR 437-001.

(3) The records of claims for compensation that each self-insured employer is required to keep in this state include, but are not limited to:

(a) Written records used and relied upon in processing claims;

(b) A written record of all payments made as a result of any claim including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing;

(c) A written record as to whether supplemental temporary disability benefits, as required under ORS 656.210(5) for workers employed in more than one job, were approved or denied; and

(d) A summary sheet for each claim showing all payments made, separated into disability, medical, and vocational assistance payments with cumulative totals. The record of disability payments should be limited to statutory benefits and not include any additional employer obligations. Expenses must not be included in any of the three columns required on the summary sheet. "Expenses" are defined in National Council on Compensation Insurance, Workers' Compensation Statistical Plan, Part IV.

(4) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(5) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(6) Notwithstanding sections (4) and (5) of this rule, if administrative or judicial review is requested, the claim records may not be removed from this state or disposed of until after either the review is concluded and the time for an appeal from such review has expired or at least one year after final payment of compensation has been made, whichever is the last to occur.

(7) During administrative or judicial review, if a denied claim is found to be compensable the records of such claim are thereafter subject to section (5) of this rule.

(8) Claim records may be destroyed when all potential for benefits to the injured worker is gone.

(9) Records retained as required by section (1) of this rule may be removed from the state or destroyed at the end of three full calendar years after the calendar year in which the money was remitted.

Stat. Auth.: ORS 656.455, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.455
Hist.: WCD 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0335; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-110-0240
Insurer Participation in the Preferred Worker Program

(1) The insurer of the employer at injury must be an active participant in providing reemployment assistance. Participation includes issuing notices of the assistance available from the Preferred Worker Program.

(2) The insurer must notify the worker and employer at injury in writing of the reemployment assistance available from the fund. A notice must be issued:

(a) Within five days of a worker's release for work after the worker has been declared medically stationary by the attending physician;

(b) Upon determination of eligibility or ineligibility of the worker for vocational assistance under OAR 436-120; and

(c) Upon approval of a Claim Disposition Agreement.

(3) Pursuant to section (2) of this rule, the Notice to the Worker must appear in bold type and contain the following language:

The Preferred Worker Program helps Oregon's injured workers get back to work. To find out whether you qualify, contact the Preferred Worker Program at one of the telephone numbers, fax numbers, or addresses listed below. For the Salem office call: (503) 947-7588, 1-800-445-3948, or FAX (503) 947-7581. For the Medford office call: (541) 776-6032, 1-800-696-7161, or FAX (541) 776-6022. Or write the Preferred Worker Program at: 350 Winter Street NE, P.O. Box 14480, Salem, Oregon 97309-0405; or 1840 Barnett Road, Suite C, Medford, Oregon 97504-8293.

(4) Under section (2) of this rule, the Notice to the Employer must appear in bold type and contain the following language:

If your worker is unable to return to regular work because of injury-caused limitations, you may be eligible for the Preferred Worker Program incentives including Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, and Worksite Modification, which you may use to re-employ your worker. You must request Preferred Worker Program assistance from the Workers' Compensation Division within 180 days of the worker's claim closure date. To find out about the Preferred Worker Program, contact the program at one of the telephone numbers, fax numbers, or addresses listed below. For the Salem office call: (503) 947-7588, 1-800-445-3948, or FAX (503) 947-7581. For the Medford office call: (541) 776-6032, 1-800-696-7161, or FAX (541) 776-6022. Or write the Preferred Worker Program at: 350 Winter Street NE, P.O. Box 14480, Salem, Oregon 97309-0405; or 1840 Barnett Road, Suite C, Medford, Oregon 97504-8293.

(5) The insurer must provide the division with Preferred Worker information in the form and format the director prescribes in OAR 436-030, upon the following:

(a) Claim closure according to ORS 656.268;

(b) Within 30 calendar days from the insurer's receipt of the earliest Opinion and Order of an Administrative Law Judge, Order on Reconsideration, Order on Review by the Board, decision of the Court of Appeals, or stipulation which grants initial permanent disability after the latest opening of the worker's claim; and

(c) Approval of a Claim Disposition Agreement according to ORS 656.236 and documented medical evidence indicates permanent disability exists as a result of the injury or disease, and the worker is unable to return to regular employment.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)
Stats. Implemented: ORS 656.340(1), (2), (3), 656.622 & 656.726(4)
Hist.: WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0017; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-110-0320
Preferred Worker Identification Card

(1) The division issues a Preferred Worker Identification card to eligible workers. The card identifies the worker as being eligible to offer an employer Preferred Worker Program assistance. If a Preferred Worker loses the card, the division will issue a replacement card.

(2) The division issues this card as follows:

(a) Automatically at the time of claim closure based upon insurer submission of Preferred Worker information as specified in OAR 436-110-0240(5);

(b) When the worker or their representative request a card, and the worker is eligible; or

(c) Any other time the division finds a worker eligible.

(3) The division may inactivate a Preferred Worker card if:

(a) The Preferred Worker card was issued in error; or

(b) Any reason for ending Preferred Worker Program eligibility as specified in OAR 436-110-0310(4) applies.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0022; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-110-0330
Claim Cost Reimbursement

(1) Claim Cost Reimbursement provides reimbursement to the insurer for claim costs when a Preferred Worker files a claim for injury or occupational disease while employed under Premium Exemption as follows:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursable claim costs include disability benefits, medical benefits, vocational costs in accordance with OAR 436-120-0720, Claim Disposition Agreements in accordance with ORS 656.236, Disputed Claim Settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries, and administrative costs;

(c) Reimbursable claims costs for denied claims include costs incurred up to the date of denial, but are limited to benefits the insurer is obligated to pay under ORS 656 and diagnostic tests, including independent medical examinations necessary to determine compensability of the claim;

(d) The administrative cost factor to be applied to claim costs will be as published in Bulletin 316; and

(e) The claim must not be used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that claim data will not affect the employer's rates or dividend.

(2) The insurer must request Claim Cost Reimbursement as follows:

(a) Requests for reimbursement must be made within one year of the quarter within which payment was made, or within six months following notification by the employer that a preferred worker incurred an injury or disease, whichever is later;

(b) Quarterly reimbursement requests must be in the format the director prescribes by bulletin; and

(c) Reimbursement documentation must include, but not be limited to:

(A) Net amounts paid. "Net amounts" means the total compensation paid less any recoveries including, but not limited to, third party recovery or reimbursement from the Retroactive Program, Reopened Claims Program, or the fund;

(B) Payment certification statement; and

(C) Any other information the division deems necessary.

(3) Requests for reimbursement must not include:

(a) Claim costs for any injury which did not occur while the worker was employed with Premium Exemption;

(b) Costs incurred for conditions completely unrelated to the compensable claim;

(c) Costs incurred due to inaccurate, untimely, unreasonable, or improper processing of the claim;

(d) Penalties, fines or filing fees;

(e) Disposition amounts in accordance with ORS 656.236 (CDA) and 656.289 (DCS) not previously approved by the division;

(f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Program, Retroactive Program, or the fund; or

(g) Reimbursable Employer-at-Injury Program costs.

(4) Periodically, the division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts must be refunded to the division and, as applicable, future reimbursements denied if, upon audit, any of the following is found to apply:

(a) Reimbursement has been made for any of the items specified in section (3) of this rule;

(b) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented;

(c) The separate payments of compensation have not been documented;

(d) The insurer included claim costs in any dividend or retrospective rating or experience rating calculations;

(e) The insurer is unable to provide applicable records relating to experience rating, retrospective rating, or dividend calculations at the time of audit or within 14 working days thereafter.

(5) If the conditions described in subsections (4)(a) through (e) of this rule are corrected and all other criteria of the rules are met, eligibility for reimbursement may be reinstated. If reimbursement eligibility is reinstated, any moneys previously reimbursed and then recovered will be reimbursed again according to these rules.

(6) If an employer fails to notify its insurer of the "Preferred Worker" status when the Form 801 is submitted or fails to send its insurer a copy of the Preferred Worker Identification Card, and later notifies its insurer that the injury or disease was incurred by a Preferred Worker, the insurer must correct all records previously filed which include claim costs in any dividend, retrospective rating, or any claim valuation for experience rating performed.

(7) A Claim Disposition Agreement according to ORS 656.236, a Disputed Claim Settlement according to ORS 656.289, or any stipulation or agreement of a claim subject to claim cost reimbursement from the fund must meet the following requirements for reimbursement:

(a) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition must be submitted to the division prior to submitting the disposition to the Workers' Compensation Board or administrative law judge for approval;

(b) A claim's future liability and the proposed contribution from the fund must be a reasonable projection, as determined by the division, in order to be approved for reimbursement from the fund; and

(c) A request for approval of the proposed disposition must include:

(A) The original proposed disposition, containing appropriate signatures and appropriate signature lines for division and Workers' Compensation Board or administrative law judge approval, which specifies the proposed assistance from the fund;

(B) A written explanation of how the calculations for the amount of assistance from the fund were made; and

(C) Other information as required by the division.

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

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0260 & 436-110-0300; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0020
Trading Partner Agreement

(1) If the director so requires, an insurer must enter into a trading partner agreement with the director before the division will begin testing with or accept production electronic transmissions from the insurer or from a vendor on behalf of that insurer.

(2) The trading partner agreement will include:

(a) A statement that the insurer will remain responsible and liable for all electronic records transmitted to the director;

(b) Transmission protocol between sender and director;

(c) A specific description of the form, format, and delivery of electronic transmissions pursuant to OAR 436-160-0004 and 436-160-0050;

(d) Specific identifying information for insurer, third party administrator, if any, and vendor, if any;

(e) Cost allocation of transactions, if any;

(f) The time frame for the director to submit acknowledgements of transmissions; and

(g) Any other necessary statements, conditions or requirements to facilitate EDI.

Stat. Auth.: ORS 656.264 & 656.726(4)

Stats. Implemented: ORS 84.013 & 656.264

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0070
Electronic Signature

The sender's federal employer identification number (FEIN) plus its postal code as reported in the header record and stated in the trading partner agreement, if such an agreement is required, is the unique identifier that is the electronic signature for electronic data interchange.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 84.001 - 84.061 & 656.264

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0090
Address Reporting

The sender will follow the standard United States Postal Service guidelines in reporting all addresses.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.264

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0330
Proof of Coverage Effective Dates

(1) For all binder or new policy establishing document transactions submitted pursuant to OAR 436-160-0350, the coverage effective date will also be the guaranty contract effective date.

(2) For all other establishing document transactions that meet the guaranty contract filing requirements of OAR 436-160-0350, the transaction set type effective date will also be the guaranty contract effective date.

(3) For reinstatement transactions the transaction set type date will be a new guaranty contract effective date only if the transaction set type effective date is later than the expiration date of guaranty contract liability under ORS 656.423 or 656.427 as calculated by the division. If the transaction set type effective date is on or before the expiration date of guaranty contract liability, that guaranty contract will remain in effect as previously filed.

(4) For all other transactions, the effective date will be the transaction set type effective date.

(5) The policy expiration date submitted on a transaction does not terminate liability under a guaranty contract. Liability under a guaranty contract filed by an insurer continues until it is terminated pursuant to OAR 436-160-0360 or ORS 656.427.

(6) For reissue, renewal, reinstatement, or endorsement transactions, the transaction effective date will be the transaction effective date submitted by the insurer.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.264, 656.419, 656.423 & 656.427

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0340
Proof of Coverage Changes or Corrections

(1) Changes or corrections to proof of coverage information must be submitted pursuant to the standards referenced in OAR 436-160-0004.

(2) To report changes or corrections of an insured employer's name or address pursuant to ORS 656.419(4), or changes or corrections to other data elements, the insurer must transmit the appropriate transaction to specify what data is being changed or corrected.

(3) The insurer's policy number is used to assist in matching each transaction to the appropriate employer. When an insurer changes a policy number, the insurer must report that change with or prior to the next transaction submitted for that policy. Failure to report a change in the policy number will render future filings incapable of being processed by the division's information processing system and the insurer will receive a transaction rejected acknowledgement.

(4) If changing a partner name of an insured or employer does not change the entity, a new guaranty contract does not need to be filed.

(5) A transaction to change the effective date of coverage is capable of being processed by the division's information processing system only if the new date does not create a lapse in coverage. To report a change to the effective date of coverage which results in a lapse, the insurer must submit

transactions to terminate the current guaranty contract and file a new guaranty contract.

(6) To add or delete coverage for corporate officers, members of a limited liability company, partners, sole proprietors or other non-subject workers, the insurer must file the appropriate "include" or "exclude" endorsement transaction to the associated policy filing.

(7) Transactions to change the wrap-up indicator, business market, assignment date, and professional employer organization (worker leasing company) indicator are not capable of being processed by the division's information processing system.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.264, 656.419, 656.423 & 656.427
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0350
Guaranty Contract Filing Requirements

(1) For the purpose of these rules, an electronic guaranty contract consists of an executed trading partner agreement containing the guaranty described in subsection (2)(a) of this rule, and an accepted proof of coverage insured and employer electronic record.

(2) To file a guaranty contract via EDI, an insurer must do all of the following:

(a) Enter into a trading partner agreement with the director pursuant to OAR 436-160-0020 that contains a statement of assumption of liability and guaranty of payment pursuant to ORS 656.419(1);

(b) Transmit an electronic record of the proof of coverage data elements identified as mandatory or required conditional pursuant to OAR 436-160-0310, including a unique FEIN for each legally distinct employer included in the establishing document transaction; and

(c) Transmit an establishing document transaction: binder, new policy, renew policy, rewrite/reissue policy, reinstatement, add location, add employer, or add jurisdiction. A renew policy, add location, or add employer transaction will only establish a guaranty contract if the data elements have not previously been transmitted, the employer FEIN is not a duplicate per section (3) below, and coverage for that unique employer FEIN has not been previously established by the reporting carrier. A reinstatement transaction will only establish a new guaranty contract if there is a lapse in coverage and the requirements of ORS 656.419 and OAR 436-160-0350 are otherwise met.

(3) A duplicate FEIN or a FEIN previously reported under the same policy will be recorded as an additional employer location and/or an assumed business name, but will not establish an additional guaranty contract.

(4) Reinstatement, rewrite, and reissue transaction types must follow a cancellation transaction.

(5) If an employer elects to include any non-subject worker(s) under coverage, or subsequently to exclude such workers from coverage, the insurer must submit a transaction with a reason code for including or excluding a corporate officer, partner, member, sole proprietor, or any other person.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.264, 656.419, 656.423 & 656.427
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0360
Guaranty Contract Terminations

(1) For the purposes of EDI, to terminate a guaranty contract when an insurer receives written notice of cancellation of coverage from an employer pursuant to ORS 656.423, the insurer must:

(a) Provide notice to the director no more than ten calendar days after the effective date of termination by transmitting the transaction type for cancellation by insured or nonrenewal by insured. The "transaction effective date" will be used to report the effective date of termination pursuant to ORS 656.423 or 656.427;

(b) Retain the employer's written notice for inspection by the division; and

(c) Provide written notice to the employer under ORS 656.423 or 656.427(1) and (3).

(2) For the purposes of EDI, to terminate a guaranty contract for any other reason, the insurer must:

(a) Provide notice to the director no more than ten calendar days after the effective date of termination by transmitting the transaction type for cancellation, nonrenewal, or delete jurisdiction; and

(b) Provide written notice to the employer under ORS 656.423 or 656.427(1) and (3).

(3) The date of termination must be included in the written notice to the employer to terminate a guaranty contract. For the purposes of notice to the director, the transaction effective date is the termination effective date.

(4) A delete location transaction can be used to notify the director that one or more locations for an employer are no longer workplaces of the employer. This transaction does not meet the requirements of ORS 656.423 or 656.427 for notice of termination.

(5) Failure to provide timely notice to the director of termination of an insurer's guaranty contract may result in civil penalties pursuant to ORS 656.745.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.264, 656.419, 656.423 & 656.427
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0410
Medical Bill Electronic Filing Requirements

(1) The chart in Appendix "B" shows all medical bill data elements accepted via EDI in Oregon, and whether the data element is mandatory (M), conditional (C), or optional (O) for each transaction type.

(2) Unless otherwise provided in these rules, the data elements must have the meaning provided in the data dictionary pursuant to OAR 436-160-0004.

(3) Transactions will be rejected if mandatory or required conditional data elements are omitted or submitted in a format that is not capable of being processed by the division's information processing system designated for medical bill transactions.

(4) Optional data element(s) in a transaction will be ignored if the optional data element is either omitted, or submitted in a format that is not capable of being processed by the division's information processing system designated for medical bill transactions.

(5) Unless otherwise provided in these rules, an insurer approved for production transmissions will transmit medical bill data via EDI, and will not submit the same medical bill data via Bulletin 220 proprietary format to the director.

Stat. Auth.: ORS 656.726(4)
Stat. Implemented: ORS 656.264
Hist.: WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

436-160-0430
Medical Bill Data Changes or Corrections

(1) Changes or corrections to medical bill information must be submitted according to the standards referenced in OAR 436-160-0004.

(2) The Unique Bill ID will be used to match cancellations and replacements to the original bill. Failure to match on this data element will result in a rejected transaction.

Stat. Auth.: ORS 656.726(4)
Stat. Implemented: ORS 656.264
Hist.: WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: Rules affecting workers' compensation medical services.
Adm. Order No.: WCD 2-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 6-30-08
Notice Publication Date: 5-1-2008
Rules Amended: 436-010-0008, 436-010-0210, 436-010-0220, 436-010-0230, 436-010-0240, 436-010-0280, 436-010-0330
Subject: Amendments to OAR 436-010, "Medical Services":

• Make permanent the temporary rule amendments that were effective 1-2-2008, affecting OAR 436-010-0210, 0220, and 0280. These rules refer readers to the "Matrix for health care provider types" in Appendix A. The matrix, published in 2007 under administrative order number 07-057, erred in describing the treatment limitations of certain health care providers. ORS 656.245(2)(b)(A) states in part: "A medical service provider who is not qualified to be an attending physician may provide compensable medical service to an injured worker for a period of 30 days from the date of injury [emphasis added] or occupational disease or for 12 visits, whichever first occurs, without the authorization of an attending physician." The matrix described the 30-day treatment period as beginning with the first visit on the initial claim. The revised matrix corrects this description to agree with the statute and also clarifies the treatment and time-

loss authority time limits applicable to several health care provider types

• Eliminate the reference to obsolete bulletin 253, which has been incorporated into Bulletin 293 (436-010-0008)

• Provide that if a worker is disenrolled from an MCO because the worker was not subject, and the enrollment into the MCO compelled a change of attending physician or authorized nurse practitioner at the time of enrollment, that change will not count as one of the worker's maximum number of choices (436-010-0220)

• Describe the absolute and relative contraindications to lumbar artificial disc replacement (436-010-0230)

• Remove the requirement that the worker or physician provide the worker's social security number on Form 827 (436-010-0240).

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

436-010-0008
Administrative Review

(1) Administrative review before the director:

(a) Except as otherwise provided in ORS 656.704, the director has exclusive jurisdiction to resolve all matters concerning medical services disputes arising under ORS 656.245, 656.247, 656.260, 656.325 and 656.327.

(b) A party need not be represented to participate in the administrative review before the director.

(c) Any party may request that the director provide voluntary mediation or alternative dispute resolution after a request for administrative review or hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement must be in writing and be approved by the director. Any mediated agreement may include an agreement on attorney fees, if any, to be paid to the claimant or claimant's attorney. If the dispute does not resolve through mediation or alternative dispute resolution, a director's order will be issued.

(2) Administrative review and hearing processes for change of attending physician or authorized nurse practitioner issues are in OAR 436-010-0220; additional independent medical examination (IMEs) matters are in OAR 436-010-0265; and fees and non-payment of compensable medical billings are described in 436-009-0008.

(3) Except for disputes regarding interim medical benefits, when there is a formal denial of the compensability of the underlying claim, or a denial of the causal relationship between the medical service or treatment and the accepted condition or the underlying condition, the parties may apply to the Hearings Division of the Workers' Compensation Board to resolve the compensability issue.

(4) All issues pertaining to disagreement about medical services within a Managed Care Organization (MCO), including disputes under ORS 656.245(4)(a) about whether a change of provider will be medically detrimental to the injured worker, are subject to the provisions of 656.260. A party dissatisfied with an action or decision of the MCO must first apply for and complete the internal dispute resolution process within the MCO before requesting an administrative review of the matter by the director.

(5) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all disputes subject to dispute resolution within a Managed Care Organization, upon completion of the MCO process, the aggrieved party must request administrative review by the director within 60 days of the date the MCO issues its final decision. If a party has been denied access to an MCO internal dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving the particular type of dispute, the insurer must advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due. For disputes regarding interim medical benefits on denied claims, the date the insurer should have known of the dispute is no later than one year from the claim denial, or 45 days after the bill is perfected, which ever occurs last. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR 438 chapter, division 005.

(c) Disputes regarding elective surgery must be processed in accordance with OAR 436-010-0250.

(d) The director may, on the director's own motion, initiate a medical services or medical treatment review at any time.

(e) Medical provider bills for treatment or services which are subject to director's review will not be deemed payable pending the outcome of the review.

(6) Parties must submit requests for administrative review to the director in the form and format provided in Bulletins 293. When an insurer or the worker's representative submits a request without the required information, the director may dismiss the request or hold initiation of the administrative review until the information is submitted. Unrepresented workers may seek help from the director to meet the filing requirements. The requesting party must notify at the same time all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number;

(b) Specify what issues are in dispute and specify with particularity the relief sought;

(c) Provide the specific dates of the unpaid disputed treatment or services.

(7) In addition to medical evidence relating to the medical dispute, all parties may submit other relevant information, including but not limited to, written factual information, sworn affidavits, and legal argument for incorporation into the record. Such information may also include timely written responses and other evidence to rebut the documentation and arguments of an opposing party. The director may take or obtain additional evidence consistent with statute.

(8) When a request for administrative review is filed under ORS 656.247, 656.260, or 656.327, the insurer must provide a record packet, without cost, to the director and all other parties or their representatives as follows:

(a) Except for disputes regarding interim medical benefits, the packet must include certification that there is no issue of compensability of the underlying claim or condition. If there is a denial which has been reversed by the Hearings Division, the Board, or the Court of Appeals, a statement from the insurer regarding its intention, if known, to accept or appeal the decision.

(b) The packet must include a complete, indexed copy of the worker's medical record and other documents that are arguably related to the medical dispute, arranged in chronological order, with oldest documents on top, and numbered in Arabic numerals in the lower right corner of each page. The number must be preceded by the designation "Ex." and pagination of the multiple page documents must be designated by a hyphen followed by the page number. For example, page two of document ten must be designated "Ex. 10-2." The index must include the document numbers, description of each document, author, number of pages, and date of the document. The packet must include the following notice in bold type:

As required by OAR 436-010-0008, we hereby notify you that the director is being asked to review the medical care of this worker. The director may issue an order that could affect reimbursement for the disputed medical service(s).

(c) If the insurer requests review, the packet must accompany the request, with copies sent simultaneously to the other parties.

(d) If the requesting party is other than the insurer, or if the director has initiated the review, the director will request the record from the insurer. The insurer must provide the record within 14 days of the director's request in the form and format described in this rule.

(e) If the insurer fails to submit the record in the time and format specified in this rule, the director may penalize or sanction the insurer under OAR 436-010-0340.

(9) If the director determines a review by a physician is indicated to resolve the dispute, the director, in accordance with OAR 436-010-0330, may appoint an appropriate medical service provider or panel of providers to review the medical records and, if necessary, examine the worker and perform any necessary and reasonable medical tests, other than invasive

tests. Notwithstanding ORS 656.325(1), if the worker is required by the director to submit to a medical examination as a step in the administrative review process, the worker may refuse an invasive test without sanction.

(a) A single physician selected to conduct a review must be a practitioner of the same healing art and specialty, if practicable, of the medical service provider whose treatment or service is being reviewed.

(b) When a panel of physicians is selected, at least one panel member must be a practitioner of the healing art and specialty, if practicable, of the medical service provider whose treatment or service is being reviewed.

(c) When such an examination of the worker is required, the director will notify the appropriate parties of the date, time, and location of the examination. The physician or panel must not be contacted directly by any party except as it relates to the examination date, time, location, and attendance. If the parties wish to have special questions addressed by the physician or panel, these questions must be submitted to the director for screening as to the appropriateness of the questions. Matters not related to the issues before the director are inappropriate for medical review and will not be submitted to the reviewing physician(s). The examination may include, but is not limited to:

(A) a review of all medical records and diagnostic tests submitted,

(B) an examination of the worker, and

(C) any necessary and reasonable medical tests.

(10) The director will review the relevant information submitted by all parties and the observations and opinions of the reviewing physician(s).

(a) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) A party fails to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the dispute.

(b) If the dispute is not resolved by agreement and if the director determines that no bona fide dispute exists in a claim not enrolled in an MCO, the director will issue an order under ORS 656.327(1). If any party disagrees with an order of the director that no bona fide medical dispute exists, the party may appeal the order to the Board within 30 days of the mailing date of the order. Upon review, the order of the director may be modified only if it is not supported by substantial evidence in the record developed by the director.

(c) If the director issues an administrative order resolving a bona fide dispute:

(A) For disputes arising under ORS 656.245, 656.260, or 656.327, a party may file a request for hearing within 30 days of the mailing date of the order.

(B) For disputes arising under ORS 656.247, a party may file a request for hearing within 60 days of the mailing date of the order.

(C) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed before the administrative order becomes final.

(D) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this subsection and may respond to such evidence submitted by others.

(E) Any party requesting reconsideration or responding to a reconsideration request must simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(11) If the director issues an order declaring an already rendered medical treatment or medical service inappropriate, or otherwise in violation of the statute or medical rules, the worker is not obligated to pay for such.

(12) In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director will award an attorney fee to be paid by the insurer or self-insured employer, as provided in ORS 656.385. The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration will be given to the results achieved and the time devoted to the case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed $2000, nor fall outside the ranges for fees as provided in the following matrix. [Matrix not included. See ED. NOTE.]

(a) An attorney must submit the following to the director in order to be awarded an attorney fee:

(A) A current, valid retainer agreement, and

(B) A statement of hours spent on the issue before the director if greater than two hours. In the absence of such a statement, the director will assume the time spent was 1-2 hours.

(b) In determining the value of the results achieved, the director may consider, but is not limited to, the following:

(A) The fee allowed by the fee schedule provided in OAR 436-009;

(B) The overall cost of the medical treatment or service; or

(C) A written agreement between the parties regarding the value of the benefit to the worker submitted to the director prior to the issuance of an order.

(c) If any party believes extraordinary circumstances exist that justify a fee outside of the ranges provided in the above matrix or above $2000, they may submit a written or faxed statement of the extraordinary circumstances to the director. Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of $6000.

(d) An assessed attorney fee must be paid within 30 days of the date the order authorizing the fee becomes final.

(13) Any party who disagrees with an action or administrative order under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001- 0019 within 30 days of the mailing date of an order under ORS 656.245, 656.260, or 656.327, or within 60 days of the mailing date of an order under 656.247. OAR 436-001 applies to the hearing.

(a) In the review of orders issued under ORS 656.327(2), 656.260(14) and (16), and 656.247, no new medical evidence or issues will be admitted at hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.

(b) For claims not enrolled in an MCO, disputes about whether a medical service after a worker is medically stationary is compensable within the meaning of ORS 656.245(1)(c) and whether a medical treatment is unscientific, unproven, outmoded, or experimental under 656.245(3), are subject to administrative review by the director. If appealed, review at hearing is subject to the "no new medical evidence or issues rule" in subsection (13)(a) of this rule. However, if the disputed medical service or medical treatment is determined compensable under 656.245(1)(c) or 656.245(3) all disputes and assertions about whether the compensable medical services are excessive, inappropriate, ineffectual, or in violation of the director's rules regarding the performance of medical services are subject to the substantial evidence rule at hearing.

(14) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254 or 656.745 may request a hearing by the Hearings Division of the board as follows:

(a) A written request for a hearing must be mailed to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The request must be mailed to the division within 60 days after the mailing date of the order or notice of assessment.

(c) The division will forward the request and other pertinent information to the board.

(15) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (14) of this rule, under these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (13) of this rule.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331, 656.704

Hist.: WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96;

WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08

436-010-0210
Who May Provide Medical Services and Authorize Timeloss

(1) Type A and B attending physicians may authorize time loss and manage medical services subject to the limitations of ORS chapter 656. (See "Matrix for health care provider types" Appendix A)[Appendix not included. See ED. NOTE.]

(2) Emergency room physicians may authorize time loss for not more than 14 days when they refer the worker to a primary care physician. However an emergency room physician also in private practice, apart from the duties of an emergency room physician, may qualify as a type A attending physician. For the purpose of this rule, private practice means a physician who treats individuals on an established patient basis.

(3) Authorized primary care physicians and authorized nurse practitioners may provide medical services to injured workers subject to the terms and conditions of the governing MCO. An MCO may allow greater latitude for the provider types to treat a worker enrolled under ORS 656.260.

(4) Attending physicians and authorized nurse practitioners may prescribe treatment or services to be carried out by persons licensed to provide a medical service. Attending physicians may prescribe treatment or services to be carried out by persons not licensed to provide a medical service or treat independently only when such services or treatment is rendered under the physician's direct control and supervision. Reimbursement to a worker for home health care provided by a worker's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.

(5) Authorized nurse practitioners, out-of-state nurse practitioners, and physician assistants working within the scope of their license and as directed by the attending physician, need not be working under a written treatment plan as prescribed in OAR 436-010-0230(4)(a), nor under the direct control and supervision of the attending physician.

(6) Effective October 1, 2004, in order to provide any compensable medical service under ORS Chapter 656, a nurse practitioner licensed under 678.375 to 678.390 must certify in a form provided by the director that the nurse practitioner has reviewed a packet of materials which the director will provide upon request and must have been assigned an authorized nurse practitioner number by the director. An authorized nurse practitioner may:

(a) Provide compensable medical services to an injured worker for a period of 90 days from the date of the first nurse practitioner visit on the initial claim. Thereafter, medical services provided by an authorized nurse practitioner are not compensable without authorization of an attending physician; and

(b) Authorize temporary disability benefits for a period of up to 60 days from the date of the first nurse practitioner visit on the initial claim.

(7) In accordance with ORS 656.245(2)(a), with the approval of the insurer, the worker may choose an attending physician outside the state of Oregon. Upon receipt of the worker's request, or the insurer's knowledge of the worker's request to treat with an out-of-state physician, the insurer must give the worker written notice of approval or denial of the worker's choice of attending physician within 14 days.

(a) If the insurer does not approve the worker's out-of-state physician, notice to the worker must clearly state the reason(s) for the denial, which may include, but are not limited to, the out-of-state physician's refusal to comply with OAR 436-009 and 436-010, and identify at least two other physicians of the same healing art and specialty whom it would approve. The notice must also inform the worker that if the worker disagrees with the denial, the worker may refer the matter to the director for review under the provisions of 436-010-0220.

(b) If the insurer approves the worker's choice of out-of-state attending physician, the insurer must immediately notify the worker and the medical service provider in writing of the following:

(A) The Oregon fee schedule requirements;

(B) The manner in which the out-of-state physician may provide compensable medical treatment or services to Oregon injured workers; and

(C) Billings for compensable services in excess of the maximum allowed under the fee schedule may not be paid by the insurer.

(8) After giving prior approval, if the out-of-state physician does not comply with these rules, the insurer may object to the worker's choice of physician and must notify the worker and the physician in writing of the reason for the objection, that payment for services rendered by that physician after notification will not be reimbursable, and that the worker may be liable for payment of services rendered after the date of notification.

(9) If the worker is aggrieved by an insurer decision to object to an out-of-state attending physician, the worker or the worker's representative may refer the matter to the director for review under the provisions of OAR 436-010-0220.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.:ORS 656.726(4)
Stats. Implemented: ORS 656.005(12), 656.245 & 656.260
Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; Renumbered from 436-069-0301, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0050; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-000; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08

436-010-0220
Choosing and Changing Medical Providers

(1) A newly selected attending physician, authorized nurse practitioner, or a specialist physician who becomes primarily responsible for the worker's care, must notify the insurer not later than five days after the date of change or first treatment, using Form 827. An attending physician or authorized nurse practitioner:

(a) Is primarily responsible for the worker's care,

(b) Authorizes time loss,

(c) Monitors ancillary care and specialized care, and

(d) Is determined by the facts of the case and the actions of the physician, not whether a Form 827 is filed.

(2) The worker may have only one attending physician or authorized nurse practitioner at a time. Simultaneous or concurrent treatment by other medical service providers must be based upon a written request of the attending physician or authorized nurse practitioner, with a copy of the request sent to the insurer. Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be authorized by the injured worker's attending physician or authorized nurse practitioner to be reimbursable. When the attending physician or authorized nurse practitioner refers the worker to a specialist physician, the referral must be written. An attending physician must specify any limitations regarding the referral within such document. Unless the documented referral limits the referral to consultation only, the referral is deemed to include attending physician authorization for the specialist physician to provide or order all compensable medical services and treatment he or she determines appropriate. Nothing in this rule diminishes the attending physician's responsibility to fulfill all their duties under ORS Chapter 656, including authorizing temporary disability. Fees for services by more than one physician at the same time are payable only when the service is sufficiently different that separate medical skills are needed for proper care.

(3) The worker is allowed to change his or her attending physician or authorized nurse practitioner by choice two times after the initial choice. Referral by the attending physician or authorized nurse practitioner to another attending physician or authorized nurse practitioner, initiated by the worker, will count in this calculation. The limitations of the worker's right to choose physicians or authorized nurse practitioners under this section begin with the date of injury and extend through the life of the claim. For purposes of this rule, the following are not considered changes by choice of the worker:

(a) Emergency services by a physician;

(b) Examinations at the request of the insurer;

(c) Consultations or referrals for specialized treatment or services initiated by the attending physician or authorized nurse practitioner;

(d) Referrals to radiologists and pathologists for diagnostic studies;

(e) When workers are required to change medical service providers to receive compensable medical services, palliative care, or time loss authorization because their medical service provider is no longer qualified as an attending physician or authorized to continue providing compensable medical services;

(f) Changes of attending physician or authorized nurse practitioner required due to conditions beyond the worker's control. This could include, but not be limited to:

(A) When the physician terminates practice or leaves the area;

(B) When a physician is no longer willing to treat an injured worker;

(C) When the worker moves out of the area requiring more than a 50 mile commute to the physician;

(D) When the period for treatment or services by a type B attending physician or an authorized nurse practitioner has expired; (See "Matrix for health care provider types" Appendix A); [Appendix not included. See ED. NOTE.]

(E) When the nurse practitioner is required to refer the worker to an attending physician for a closing examination or because of a possible worsening of the worker's condition following claim closure;

(F) When a worker is subject to managed care and compelled to be treated inside an MCO; and

(G) When the worker is disenrolled from an MCO because the worker was not subject to the MCO contract and the enrollment into the MCO compelled a change of attending physician or authorized nurse practitioner at the time of enrollment;

(g) A Worker Requested Medical Examination;

(h) Whether a worker has an attending physician or authorized nurse practitioner who works in a group setting/facility and the worker sees another group member due to team practice, coverage, or on-call routines; or

(i) When a worker's attending physician or authorized nurse practitioner is not available and the worker sees a medical provider who is covering for that provider in their absence.

(4) When a worker has made an initial choice of attending physician or authorized nurse practitioner and subsequently changed two times by choice or reaches the maximum number of changes established by the MCO, the insurer must inform the worker by certified mail that any subsequent changes by choice must have the approval of the insurer or the director. If the insurer fails to provide such notice and the worker subsequently chooses another attending physician or authorized nurse practitioner, the insurer must pay for compensable services rendered prior to notice to the worker. If an attending physician or authorized nurse practitioner begins treatment without being informed that the worker has been given the required notification, the insurer must pay for appropriate services rendered prior to the time the insurer notifies the medical service provider that further payment will not be made and informs the worker of the right to seek approval of the director.

(5)(a) If a worker not enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the limit established in section (3) of this rule, the worker must request approval from the insurer. Within 14 days of receipt of a request for a change of medical service provider or a Form 827 indicating the worker is choosing to change his or her attending physician or authorized nurse practitioner, the insurer must notify the worker in writing whether the change is approved. If the insurer objects to the change, the insurer must advise the worker of the reasons, advise that the worker may request director approval, and provide the worker with Form 2332 (Worker's Request to Change Attending Physician or Authorized Nurse Practitioner) to complete and submit to the director if the worker wishes to make the requested change.

(b) If a worker enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the changes allowed in the MCO contract or certified plan, the worker must request approval from the insurer. Within 14 days of receiving the request, the insurer must notify the worker in writing whether the change is approved. If the insurer denies the change, the insurer must provide the reasons and give notification that the worker may request dispute resolution through the MCO. If the MCO does not have a dispute resolution process for change of attending physician or authorized nurse practitioner issues, the insurer shall give notification that the worker may request director approval and provide the worker with a copy of Form 2332.

(6) Upon receipt of a worker's request for an additional change of attending physician or authorized nurse practitioner, the director may notify the parties and request additional information. Upon receipt of a written request from the director for additional information, the parties will have 14 days to respond in writing.

(7) After receipt and review, the director will issue an order advising whether the change is approved. The change of attending physician or authorized nurse practitioner will be approved if the change is due to circumstances beyond the worker's control as described in section (3) of this rule. On a case by case basis consideration may be given, but is not limited to, the following:

(a) Whether there is medical justification for a change, including whether the attending physician or authorized nurse practitioner can provide the type of treatment or service that is appropriate for the worker's condition.

(b) Whether the worker has moved to a new area and wants to establish an attending physician or authorized nurse practitioner closer to the worker's residence.

(c) Whether such a change will cause unnecessary travel costs or lost time from work.

(8) Any party that disagrees with the director's order may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order. 436-001 applies to the hearing.

[ED. NOTE: Forms & Appendices referenced are available from the agency.]
Stat. Auth.: ORS 656.276(4)
Stats. Implemented: ORS 656.245, 656.252 & 656.260
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 436-069-0401, 5-1-85; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0060; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08

436-010-0230
Medical Services and Treatment Guidelines

(1) Medical services provided to the injured worker must not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(2) An employer or insurer representative may not attend a worker's medical appointment without written consent of the worker. The worker has the right to refuse such attendance.

(a) The consent form must state that the worker's benefits cannot be suspended if the worker refuses to have a representative present.

(b) The consent form must be written in a way that allows the worker to understand it and to overcome language or cultural differences.

(c) The insurer must retain a copy of a signed consent form in the claim file.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment and services.

(4)(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A).

(b) The attending physician, authorized nurse practitioner, or specialist physician must sign a copy of the treatment plan within 30 days of the commencement of treatment and send it to the insurer. Failure of the physician or nurse practitioner to sign or mail the treatment plan may subject the attending physician or authorized nurse practitioner to sanctions under OAR 436-010-0340, but shall not affect payment to the ancillary medical service provider.

(c) Medical services prescribed by an attending physician, specialist physician, or authorized nurse practitioner and provided by a chiropractor, naturopath, acupuncturist, or podiatrist will be subject to the treatment plan requirements set forth in subsection (4)(a) and (b) of this rule.

(d) Unless otherwise provided for within utilization and treatment standards under an MCO contract, the usual range for therapy visits does not exceed 20 visits in the first 60 days, and 4 visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment or services. The attending physician or authorized nurse practitioner must document the need for medical services in excess of these guidelines when submitting a written treatment plan. The process outlined in OAR 436-010-0008 should be followed when an insurer believes the treatment plan is inappropriate.

(5) The attending physician or authorized nurse practitioner, when requested by the insurer or the director through the insurer to complete a physical capacity or work capacity evaluation, must complete the evaluation within 20 days, or refer the worker for such evaluation within seven days. The attending physician or authorized nurse practitioner must notify the insurer and the worker in writing if the worker is incapable of participating in such evaluation.

(6) Prescription medications are required medical services under the provisions of ORS 656.245(1)(a), (1)(b), and (1)(c) and do not require prior approval under the palliative care provisions of OAR 436-010-0290. A pharmacist, dispensing physician, or authorized nurse practitioner must dispense generic drugs to injured workers in accordance with and under ORS 689.515. For the purposes of this rule, the worker will be deemed the "purchaser" and may object to the substitution of a generic drug. However, payment for brand name drugs are subject to the limitations provided in OAR 436-009-0090. Workers may have prescriptions filled by a provider of their choice, unless otherwise provided for in accordance with an MCO contract. Except in an emergency, drugs and medicine for oral consumption supplied by a physician's or authorized nurse practitioner's office are compensable only for the initial supply to treat the worker with the medication up to a maximum of 10 days, subject to the requirements of the provider's licensing board, this rule and 436-009-0090. Compensation for certain drugs is limited as provided in 436-009-0090.

(7) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured worker or they are provided in accordance with a utilization and treatment standard adopted by the director. Vitamin B-12 injections are not reimbursable unless necessary because of a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(8) X-ray films must be of diagnostic quality and accompanied by a report. 14" x 36" lateral views are not reimbursable.

(9) Upon request of either the director or the insurer, original diagnostic studies, including but not limited to actual films, must be forwarded to the director, the insurer, or the insurer's designee, within 14 days of receipt of a written request.

(a) Diagnostic studies, including films must be returned to the medical provider within a reasonable time.

(b) The insurer must pay for a reasonable charge made by the provider for the costs of delivery of diagnostic studies, including films.

(c) If a medical provider does not forward the films to the director or the insurer within 14 days of receipt of a written request, civil penalties may be imposed.

(10) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the worker requires an item not usually considered necessary in the great majority of workers with similar impairments. Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist.

(11) Physical restorative services may include but are not limited to a regular exercise program or swim therapy. Such services are not compensable unless the nature of the worker's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The attending physician or authorized nurse practitioner must justify by report why the worker requires services not usually considered necessary for the majority of injured workers.

(12) The cost of repair or replacement of prosthetic appliances damaged when in use at the time of and in the course of a compensable injury is a compensable medical expense, including when the worker received no physical injury. For purposes of this rule, a prosthetic appliance is an artificial substitute for a missing body part or any device by which performance of a natural function is aided, including but not limited to hearing aids and eyeglasses.

(13) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) is always inappropriate for injured workers with the following conditions (absolute contraindications):

(a) Metabolic bone disease — for example, osteoporosis;

(b) Known spondyloarthropathy (seropositive and seronegative);

(c) Posttraumatic vertebral body deformity at the level of the proposed surgery;

(d) Malignancy of the spine;

(e) Implant allergy to the materials involved in the artificial disc;

(f) Pregnancy — currently;

(g) Active infection, local or systemic;

(h) Lumbar spondylolisthesis or lumbar spondylosis;

(i) Prior fusion, laminectomy that involves any part of the facet joint, or facetectomy at the same level as proposed surgery; or

(j) Spinal stenosis — lumbar — moderate to severe lateral recess and central stenosis.

(14) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) may be inappropriate for injured workers with the following conditions, depending on severity, location, etc. (relative contraindications):

(a) A comorbid medical condition compromising general health, for example, hepatitis, poorly controlled diabetes, cardiovascular disease, renal disease, autoimmune disorders, AIDS, lupus, etc.;

(b) Arachnoiditis;

(c) Corticosteroid use (chronic ongoing treatment with adrenal immunosuppression);

(d) Facet arthropathy — lumbar — moderate to severe, as shown radiographically;

(e) Morbid obesity — BMI greater than 40;

(f) Multilevel degenerative disc disease — lumbar — moderate to severe, as shown radiographically;

(g) Osteopenia — based on bone density test;

(h) Prior lumbar fusion at a different level than the proposed artificial disc replacement; or

(i) Psychosocial disorders — diagnosed as significant to severe.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0201, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0040; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08

436-010-0240

Reporting Requirements for Medical Providers

(1) The act of the worker in applying for workers' compensation benefits constitutes authorization for any medical provider and other custodians of claims records to release relevant medical records under ORS 656.252 and diagnostic records required under 656.325. Medical information relevant to a claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part. The authorization is valid for the duration of the work related injury or illness and is not subject to revocation by the worker or the worker's representative. However, this authorization does not authorize the release of information regarding:

(a) Federally funded drug and alcohol abuse treatment programs governed by Federal Regulation 42, CFR 2, which may only be obtained in compliance with this federal regulation, or

(b) The release of HIV related information otherwise protected by ORS 433.045(3). HIV related information should only be released when a claim is made for HIV or AIDS or when such information is directly relevant to the claimed condition(s).

(2) Any physician, hospital, clinic, or other medical service provider, must provide all relevant information to the director, the insurer or their representative upon presentation of a signed Form 801, 827, or 2476 (Release of Information). "Signature on file," printed on the worker's signature line of any authorized Release of Information prescribed by the director, is a valid medical release, provided the insurer maintains the signed original in accordance with OAR 436-010-0270. However, nothing in this rule will prevent a medical provider from requiring a signed authorized Release of Information.

(3) When the worker has initiated a claim or wishes to initiate a claim, the worker and the first medical service provider on the initial claim must complete the "Worker's and Physician's Report for Workers' Compensation Claims" (Form 827) in every detail, to include the worker's name, address, and information required by ORS 656.252 and 656.254. The medical service provider must mail Form 827 to the proper insurer no later than 72 hours after the worker's first visit (Saturdays, Sundays, and holidays will not be counted in the 72-hour period).

(a) Diagnoses stated on Form 827 and all subsequent reports must conform to terminology found in the International Classification of Disease-9-Clinical Manifestations (ICD-9-CM) or taught in accredited institutions of the licentiate's profession.

(b) The worker's SSN will be used by the director to carry out the director's duties under ORS Chapter 656. The worker may voluntarily authorize additional use of the worker's SSN by various government agencies to carry out their statutory duties.

(4) All medical service providers must notify the worker at the time of the first visit of the manner in which they can provide compensable medical services and authorize time loss. The worker must also be notified that they may be personally liable for noncompensable medical services. Such notification should be made in writing or documented in the worker's chart notes.

(5) Attending physicians or authorized nurse practitioners must, upon request from the insurer, submit verification of the worker's medical limitations related to the worker's ability to work, resulting from an occupational injury or disease. If the insurer requires the attending physician or authorized nurse practitioner to complete a release to return to work form, the insurer must use Form 3245.

(6) Medical providers must maintain records necessary to document the extent of medical services provided to injured workers.

(7) Progress reports are essential. When time loss is authorized by the attending physician or authorized nurse practitioner, the insurer may require progress reports every 15 days through the use of the physician's report, Form 827. Chart notes may be sufficient to satisfy this requirement. If more information is required, the insurer may request a brief or complete narrative report. Fees for such narrative reports must be in accordance with OAR 436-009-0015(11), 436-009-0070(2) or (3), whichever applies

(8) Reports may be handwritten and include all relevant or requested information.

(9) All records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(10) The medical provider must respond within 14 days to the request for relevant medical records as specified in section (1) of this rule, progress reports, narrative reports, original diagnostic studies, including, but not limited to, actual films, and any or all necessary records needed to review the efficacy of medical treatment or medical services, frequency, and necessity of care. The medical provider must be reimbursed for copying documents in accordance with OAR 436-009-0070(1). If the medical provider fails to provide such information within fourteen (14) days of receiving a request sent by certified mail, penalties under 436-010-0340 or 436-015-0120 may be imposed.

(11) The attending physician or authorized nurse practitioner must inform the insurer and the worker of the anticipated date of release to work, the anticipated date the worker will become medically stationary, the next appointment date, and the worker's medical limitations. To the extent any medical provider can determine these matters they must be included in each progress report. The insurer must not consider the anticipated date of becoming medically stationary as a release to return to work.

(12) The attending physician or authorized nurse practitioner must notify the worker, insurer, and all other health care providers involved in the worker's treatment when the worker is determined medically stationary. The medically stationary date must be the date of the exam, and not a projected date. The notice must provide:

(a) The medically stationary date; and

(b) Whether the worker is released to any kind of work.

(13) The attending physician or authorized nurse practitioner must advise the worker, and within five days provide the insurer with written notice, of the date the injured worker is released to return to regular or modified work. The physician or nurse must not notify the insurer or employer of the worker's release to return to regular or modified work without first advising the worker.

(14) When an injured worker files a claim for aggravation, the claim must be filed on Form 827 and must be signed by the worker or the worker's representative and the attending physician. The attending physician, on the worker's behalf, must submit the aggravation form to the insurer within five days of the examination where aggravation is identified. When an insurer or self-insured employer receives a completed aggravation form, it must process the claim. Within 14 days of the examination the attending physician must also send a written report to the insurer that includes objective findings that document:

(a) Whether the worker is unable to work as a result of the compensable worsening; and

(b) Whether the worker has suffered a worsened condition attributable to the compensable injury under the criteria contained in ORS 656.273.

(15) The attending physician, authorized nurse practitioner, or the MCO may request consultation regarding conditions related to an accepted claim. The attending physician, authorized nurse practitioner, or the MCO must promptly notify the insurer of the request for consultation. This requirement does not apply to diagnostic studies performed by radiologists and pathologists. The attending physician, authorized nurse practitioner, or MCO must provide the consultant with all relevant clinical information. The consultant must submit a copy of the consultation report to the attending physician, authorized nurse practitioner, the MCO, and the insurer within 10 days of the date of the examination or chart review. No additional fee beyond the consultation fee is allowed for this report. MCO requested consultations that are initiated by the insurer, which include examination of the worker, must be considered independent medical examinations subject to the provisions of OAR 436-010-0265.

(16) A medical service provider must not unreasonably interfere with the right of the insurer, under OAR 436-010-0265(1), to obtain a medical examination of the worker by a physician of the insurer's choice.

(17) Any time an injured worker changes his or her attending physician or authorized nurse practitioner:

(a) The new provider is responsible for:

(A) Submitting Form 827 to the insurer not later than five days after the change or the date of first treatment; and

(B) Requesting all available medical information, including information concerning previous temporary disability periods, from the previous attending physician, authorized nurse practitioner, or from the insurer.

(b) The requirements of paragraphs (A) and (B) also apply anytime a worker is referred to a new physician qualified to be an attending physician or to a new authorized nurse practitioner primarily responsible for the worker's care.

(c) Anyone failing to forward requested information within 14 days to the new physician or nurse will be subject to penalties under OAR 436-010-0340.

(18) Injured workers, or their representatives, are entitled to copies of all protected health information in the medical records. These records should ordinarily be available from the insurers, but may also be obtained from medical providers under the following conditions:

(a) A medical provider may charge the worker for copies in accordance with OAR 436-009-0070(1), but a patient may not be denied summaries or copies of his/her medical records because of inability to pay.

(b) For the purpose of this rule, "protected health information in the medical record" means any oral or written information in any form or medium that is created or received and relates to:

(A) The past, present, or future physical or mental health of the patient;

(B) The provision of health care to the patient; and

(C) The past, present, or future payment for the provision of health care to the patient.

(c) A worker or the worker's representative may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Upon request, the entire health information record in the possession of the medical provider will be provided to the worker or the worker's representative. This includes records from other healthcare providers, except that the following may be withheld:

(A) Information which was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information;

(B) Psychotherapy notes;

(C) Information compiled for use in a civil, criminal, or administrative action or proceeding; and

(D) Other reasons specified by federal regulation.

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

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

Stat. Auth.: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252, 656.254 & 656.273

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0101, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0030; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08

436-010-0280
Determination of Impairment

(1) On disabling claims, when the worker becomes medically stationary, the attending physician must complete a closing exam or refer the worker to a consulting physician for all or part of the closing exam. For workers under the care of a type B attending physician or an authorized nurse practitioner, the provider must refer the worker to a type A attending physician to do a closing exam if there is a likelihood the worker has permanent impairment. The closing exam must be completed under OAR 436-030 and 436-035.

(2) The attending physician or authorized nurse practitioner has 14 days from the medically stationary date to send the closing report to the insurer. Within eight days of the medically stationary date, the attending physician may arrange a closing exam with a consulting physician. This exam does not count as an IME or a change of attending physician.

(3) When an attending physician requests a consulting physician to do the closing exam, the consulting physician has seven days from the date of the exam to send the report for the concurrence or objections of the attending physician. The attending physician must also state, in writing, whether they agree or disagree with all or part of the findings of the exam. Within seven days of receiving the report, the attending physician must make any comments in writing and send the report to the insurer. (See "Matrix for Health Care Provider types" Appendix A) [Appendix not included. See ED. NOTE.]

(4) The attending physician must specify the worker's residual functional capacity or refer the worker for completion of a second level physical capacities exam or work capacities exam (as described in OAR 436-009-0070(4)) pursuant to the following:

(a) A physical capacities exam when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A work capacities exam when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(5) If the insurer issues a major contributing cause denial on the accepted claim and the worker is not medically stationary, the health care provider must do a closing exam, or in the case of a type B attending physician or authorized nurse practitioner, refer the worker to a type A attending physician for a closing exam. (See "Matrix for Health Care Provider types" Appendix A) [Appendix not included. See ED. NOTE.]

(6) The closing report must address the accepted conditions and must include:

(a) Objective findings of permanent impairment; and

(b) A statement of the validity of the impairment findings.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4) & 656.245(2)(b)(B)
Stats. Implemented: ORS 656.245 & 656.252
Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08

436-010-0330
Medical Arbiters and Panels of Physicians

(1) In consultation with the Workers' Compensation Management-Labor Advisory Committee under ORS 656.790, the director will establish and maintain a list of physicians to be used as follows:

(a) To appoint a medical arbiter or a panel of medical arbiters in accordance with ORS 656.268 and to select a physician in accordance with 656.325(1)(b).

(b) To appoint an appropriate physician or a panel of physicians to review medical treatment or medical services disputes under ORS 656.245 and 656.327.

(2) Arbiters, panels of arbiters, physicians, and panels of physicians will be selected by the director.

(3) When a worker is required to attend an examination under this rule the director will provide notice of the examination to the worker and all affected parties. The notice will inform all parties of the time, date, location and purpose of the examination. Such examinations will be at a place reasonably convenient to the worker, if possible.

(4) The arbiters, the panels of arbiters, the physicians and the panels of physicians selected under this rule must be paid by the insurer in accordance with OAR 436-009-0070(10) to (12).

(5) The insurer must pay the worker for all necessary related services in accordance with ORS 656.325(1).

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.268, 656.325 & 656.327
Hist.: WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0047; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

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Department of Corrections
Chapter 291

Rule Caption: Security Threat Management.
Adm. Order No.: DOC 13-2008
Filed with Sec. of State: 5-19-2008
Certified to be Effective: 5-19-08
Notice Publication Date: 1-1-2008
Rules Adopted: 291-069-0200, 291-069-0210, 291-069-0220, 291-069-0230, 291-069-0240, 291-069-0250, 291-069-0260, 291-069-0270, 291-069-0280
Rules Repealed: 291-069-0010, 291-069-0020, 291-069-0031, 291-069-0040, 291-069-0050, 291-069-0060, 291-069-0070, 291-069-0090, 291-069-0100
Subject: These rule amendments are necessary in order to establish department policy and procedures for the identification and management of individual inmates and groups of inmates that in the judgment of the department present an elevated security threat risk based on their criminal history, institutional conduct history, present behavior, interstate transfer status, escape history, and based on intelligence.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-069-0200
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of these rules is to establish department policy and procedures for the identification and management of individual inmates and groups of inmates that in the judgment of the department present an elevated security threat risk based their criminal history, institutional conduct history, present behavior, interstate transfer status, escape history, and based on intelligence.

(3) Policy:

(a) Security threat activity by individual inmates or groups of inmates poses a serious threat to the safe, secure, orderly and efficient operation and management of Department of Corrections facilities, the safety and security of Department employees, inmates, and the public. For these reasons, it is the policy of the Department of Corrections to maintain zero-tolerance for significant security threat related behavior and activity by inmates under its jurisdiction. In furtherance of this policy, the Department of Corrections will:

(A) Identify and effectively manage inmates and groups of inmates that in the judgment of the Department present an elevated security threat risk based on their criminal history, institutional conduct history, present behavior, interstate transfer status, escape history, and based on intelligence. Effective inmate management may include intensive interaction with the inmates by trained Security Threat Management managers, and the suspension, restriction, or modification of department programs and services on an individualized basis, in accordance with these rules.

(B) Maintain an information network to monitor and control security threat behavior and activity and provide intelligence information to department staff.

(C) Investigate security threat related behavior or activity by inmates in a fair and objective manner.

(b) In cooperation with other criminal justice agencies, the Department of Corrections may share information regarding security threat behavior or activity of inmates or groups of inmates to assist in controlling

criminal activity associated with these inmates. Security threat related behavior or activity that may include criminal conduct shall be referred to the Oregon State Police.

(c) Inmates under the jurisdiction of the Department of Corrections shall not encourage, promote, further, assist, or otherwise participate in any security threat behavior or activity as described in these rules.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0210
Definitions

(1) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(2) Intelligence File: Those documents maintained by the Department of Corrections for administrative and case management purpose.

(3) Security Threat Activity: Inmate behavior which poses a significant threat to the safe and secure operation of the facility, including, but not limited to, threatening or inflicting bodily injury on another person, posing a high risk of escape, promoting or engaging in disruptive group behavior, distributing a controlled substance, or being involved in any other activity that could significantly threaten the safe and secure operation of the facility.

(4) Security Threat Group (STG): Any group of two or more individuals who:

(a) Have a common group name, identifying symbol, or characteristic which serves to distinguish themselves from others.

(b) Have members, affiliates, and/or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violates Oregon Department of Corrections rules.

(c) Have the potential to act in concert to present a threat, or potential threat, to staff, public, visitors, inmates, offenders or the secure and orderly operation of the institution.

(5) Security Threat Group Paraphernalia: Any material, document(s) or items evidencing security threat group involvement or activities (e.g., rosters, constitutions, structures, codes, pictures, training material, clothing, communications or other security threat group-related contraband).

(6) Security Threat Management (STM) Assistant Chief: A department Public Services Division, Special Investigations Unit employee assigned to coordinate communication between institution managers and STM lieutenants; monitor, conduct, develop and coordinate employee training; and manage the department's overall security threat management program.

(7) Security Threat Management (STM) Intelligence Analyst: An STM Unit employee with the responsibility of receiving incoming intelligence and data, analyzing information, predicting trends and activity, organizing information into a usable format, documenting information and disseminating intelligence to appropriate stakeholders.

(8) Security Threat Management (STM) Lieutenant: An STM Unit employee assigned to review and investigate suspected security threat activity; maintain and gather intelligence on security threat groups, inmates and their affiliates; directly manage the day-to-day activities of inmates identified as security threats; assist the STM Assistant Chief and his/her team responsible for STM coordination with institution managers; assist in monitoring, conducting, developing, and coordinating employee training; serve as liaison between the department and other local, state and federal law enforcement agencies and correctional institutions; and assist in managing the department's overall security threat management program.

(9) Security Threat Management (STM) Unit: Department of Corrections employees, as assigned, consisting of the department STM Assistant Chief, STM lieutenants and STM intelligence analyst(s).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0220
Institution Intelligence Officer(s)

Each functional unit manager shall designate one security manager or Assistant Superintendent of Security, and a designated backup, to act as the institution intelligence officer. This employee will be the direct liaison of STM intelligence information between the STM lieutenant and the institution. The purpose of this is to get intelligence information to the institution at a level capable of making immediate management decisions based on the intelligence received.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0230
Identification

(1) The department will identify inmates and groups of inmates that present an elevated security threat risk based on their criminal history, institutional conduct history, interstate transfer status, escape history, present behavior, STM intelligence data base, human intelligence, and other available resources. Inmates identified by the department as presenting an elevated security threat may be managed by the Security Threat Management (STM) Unit.

(2) An inmate may be identified as a "high alert" management inmate based on the criteria listed in Attachment A.

(3) The STM Unit will maintain a record of all inmates identified by intelligence sources as affiliates of a security threat group who are actively supporting, promoting or engaging in behavior which caused an elevated risk to the safety, security and orderly operations of DOC facilities. These records will be kept in a secured area designated by the STM Assistant Chief.

(4) Any department employee who becomes aware of any inmate who may be engaged in or affiliated with security threat behavior or activity shall communicate such information to the appropriate STM lieutenant. Each correctional facility will have an assigned STM lieutenant, who may or may not be housed on-site, but will be responsible for management of STM related activity at their specific institutions.

(5) Upon receipt of security threat information, the STM lieutenant will determine whether the information is valid. If the information is deemed valid, the STM lieutenant will forward the information to the institution intelligence officer and the STM intelligence analyst.

(6) The STM intelligence analyst will use various means to analyze and document the intelligence information. The intelligence analyst will then disseminate any applicable information to the appropriate STM lieutenant, institution intelligence officer, functional unit manager or other internal and external stakeholders.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0240
Reporting

The STM Unit will produce a periodic security threat management distribution report and distribute the report to the Director, Deputy Director, Assistant Directors, Inspector General, Institutions Administrator, Chief of Security, institution functional unit managers, and other criminal justice agencies as requested or required by the Director or designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0250
Discipline

(1) The hearings officers and adjudicators shall report all disciplinary actions which involve security threat related activity to the STM lieutenant to assist in tracking security threat group activity, trends, etc.

(2) Any inmate found in violation of a rule(s) of prohibited inmate conduct which involved security threat activity may be subject to a review from the STM Unit.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0260
Security Threat Group Paraphernalia

All security threat group paraphernalia, as defined in this rule, is unauthorized and considered contraband within Department of Corrections facilities and is subject to confiscation. Security threat group paraphernalia may be used to further document and validate security threat group identification and classification.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0270
Management of "High Alert" Inmates

(1) Inmates identified by the department as "high alert" management inmates may be managed by the department's STM Unit.

(2) Inmate Management Plans: The STM lieutenant will develop an approved Inmate Management Plan for each inmate identified by the department as a "high alert" management inmate.

(a) The Inmate Management Plan will be in writing and describe the behavior or other circumstance(s) that resulted in the inmate's identification as "high alert," and the department's corresponding program and behavior expectations for the inmate.

(b) The Inmate Management Plan may direct the denial, removal, suspension, restriction or modification of inmate programs, services or activities for the inmate to encourage an inmate to modify his or her behavior to conform to department rules, standards, and staff expectations, and to advance the inmate towards appropriate pro-social behavior, in accordance with these rules.

(c) The Inmate Management Plan will document any denial, removal, suspension, restriction, or modification of inmate programs, services or activities ordered for the inmate.

(d) The STM lieutenant will provide each high alert inmate with a copy of the inmate's Inmate Management Plan.

(3) Denial, Removal, Suspension, Restriction or Modification of Inmate Programs, Services or Activities:

(a) Facility Programs, Work Assignments, and Clubs: An inmate under the management of the STM Unit may be denied participation in, or may be removed from, any work or program assignment, group activity or club if the inmate's participation is determined to present an undue risk to the safe, secure, orderly or efficient operation and management of the facility or as a part of an approved Inmate Management Plan.

(b) Other Inmate Programs, Services, and Activities: An inmate under the management of the STM Unit may have other inmate programs, services, and activities suspended, restricted or modified by the department. Programs, services, and activities that may be affected include, but are not limited to, recreation yard, housing assignments, work assignments, canteen use, telephone use (except legal calls), visiting (except attorney visits), inmate-to-inmate mail, and television services.

(A) An Inmate Management Plan that directs the suspension, restriction, or modification of programs or services to an inmate requires the approval of the STM Assistant Chief or designee.

(B) An Inmate Management Plan that directs the suspension, restriction, or modification of programs or services to an inmate in excess of 90 days requires the approval of the Inspector General's Chief Investigator.

(C) An Inmate Management Plan that directs the suspension, restriction, or modification of programs or services to an inmate in excess of 120 days requires the approval of the Inspector General.

(D) Any suspension, restriction, or modification of programs or services provided to an inmate will be in accordance with the STM Restriction Scale. (Attachment B).

(4) Temporary Placement in Disciplinary Segregation: With the approval of the functional unit manager or designee or the officer-in-charge, the STM lieutenant may order the immediate temporary placement of an inmate in disciplinary segregation when in his or her judgment the assignment is necessary to further the department's management of a specific security threat, or the safe, secure and orderly operation and management of the facility. An inmate managed by the STM unit will not be placed in temporary segregation beyond five working days; otherwise the placement will be considered Administrative Segregation in accordance with OAR 291-046.

(5) Transfers:

(a) An inmate under management of the STM Unit may be transferred to any facility, in or out of state, in accordance with the inmate's Inmate Management Plan, the department's overall security threat management plan, interstate compact agreements and population or program management needs.

(b) The Interstate Compact Unit staff shall notify the STM Assistant Chief or designee of any inmate requesting transfer to or from Oregon where security threat group affiliation or security threat behavior is suspected.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

291-069-0280
Administrative Review

(1) An inmate who has been identified by the department as a "high alert" management inmate may obtain an administrative review of the classification action in accordance with this rule, by submitting a written request for administrative review to the Inspector General's Chief Investigator or designee at the department's central administrative offices.

(a) The administrative review request must specify the reason(s) why the inmate believes that his or her high alert management identification is inappropriate. The request for review must also include any supporting documentation by the inmate to be considered in reviewing the appropriateness of the high alert management identification.

(b) The Chief Investigator or designee must receive the administrative review request within 15 days of the issuance of the Inmate Management Plan to the inmate.

(2) Upon receipt of a timely written request for administrative review, the Chief Investigator or designee will review the high alert management identification, and affirm or reverse the classification as circumstances warrant. The decision of the Chief Investigator or designee shall be final.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08; DOC 13-2008, f. & cert. ef. 5-19-08

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Rule Caption: Prohibited Inmate Conduct and Processing Disciplinary Actions.
Adm. Order No.: DOC 14-2008
Filed with Sec. of State: 6-2-2008
Certified to be Effective: 6-2-08
Notice Publication Date: 12-1-2007
Rules Amended: 291-105-0010, 291-105-0021, 291-105-0026, 291-105-0028, 291-105-0041, 291-105-0046, 291-105-0056, 291-105-0064, 291-105-0066, 291-105-0069, 291-105-0071, 291-105-0081, 291-105-0085, 291-105-0100
Subject: The rule modifications are necessary to update and clarify the standardized process for handing inmate misconduct in Department of Corrections facilities and to reflect operational changes that have occurred since the previous amendments. The amendments expand the time an inmate may be ordered loss of leisure activities to address misconduct from 24 hours to 72 hours; define the parameters for calculating restoration of earned time credits or statutory good time as a result of adjustments to the final order for an inmate's significant positive behavior change; and require inmates to use a specific department form when filing a petition for administrative review to the Inspector General.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-105-0010
Definitions

(1) Adjudicator: The assigned employee within the facility responsible for the disposition of all informal hearings and minor misconduct reports that are to be adjudicated without a formal hearing.

(2) Attempt: Conduct which constitutes a substantial step towards the commission of a rule violation.

(3) Calendar Day: All weekdays, weekends, and holidays.

(4) Conduct Order: An Oregon Department of Corrections form CD 708, that allows restriction of an inmate's privileges for no more than 72 hours, without the need of a major or minor misconduct report disciplinary hearing, for cited rule violations, in accordance with OAR 291-105-0021(1).

(5) Conspiracy: An agreement between an inmate and one or more persons to engage in, cause, or conceal a rule violation.

(6) Contraband: Any article or thing which an inmate is prohibited by statute, rule or order from obtaining, possessing, or which the inmate is not specifically authorized to obtain or possess or which the inmate alters without authorization.

(7) Controlled Substance: A drug or its precursor as listed in ORS 475.005 through 475.999.

(8) Dangerous or Deadly Weapon: Any instrument, article or substance which is readily capable of causing death or a serious physical injury.

(9) Deadly Force: Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

(10) Department of Corrections (DOC) Employee: Any person who is full time, part time, or under temporary employment by the Department of Corrections; any person under contractual arrangement to provide services to the Department; any person employed by private or public sector agencies who is serving under Department sanctioned special assignment to provide services or support to Department programs within any Department of Corrections facility.

(11) Department of Corrections Facility: Any institution, facility, or staff office, including the grounds, operated by the Department of Corrections.

(12) Disciplinary Misconduct System (DMS): A program within the Correctional Information System (CIS) that is used to generate, record or monitor inmate disciplinary actions.

(13) Distribution: The transfer of contraband from one person to another (Distribution includes smuggling.)

(14) Drugs: Any controlled substance.

(15) Escape Device: Any item specifically designed for, physically altered for, or readily capable of being used to facilitate an escape from a Department of Corrections facility, or from custody.

(16) Explosive: A substance which, when subjected to a suitable initiating impulse, undergoes a chemical change characterized by the liberation of heat in the formation of products which are mainly gaseous.

(17) Fine: A monetary sanction imposed in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions. Inmate fines shall be deposited in the Department of Corrections Inmate Welfare Fund as confiscated funds.

(18) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(19) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an assistant director, or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(20) Harassment — Racial, Religious or Sexual: Directing offensive language or gestures toward or about another person or group or subjecting another to physical contact because of the other person's or group's race, sex, color, religion, national origin, age, marital status or disability.

(21) Hearings Officer: A DOC employee assigned to review and dispose of major, and certain minor, misconduct reports through a formal hearing.

(22) Hostage: A person held as security in order to obtain demands.

(23) Inmate: Any person under the supervision of the Department of Corrections, who is not on parole, post prison supervision, or probation status.

(24) Intoxicants: Any substance, including but not limited to, unauthorized medication and alcoholic beverages, which causes a disturbance of mental or physical capacity resulting from the introduction of the substance in the body. Intoxicants do not include controlled substances.

(25) Lesser Included Violation: Any violation which is a lesser degree of the charged violation (for example, Assault III is a lesser included violation of Assault I or Assault II. Contraband III is a lesser included violation of Contraband I or II, etc.)

(26) Local Jail: Any city or county lock up or local correctional facility.

(27) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with policy, rule or procedure during periods when the functional unit manager or officer of the day are not readily available.

(28) Order: Any direction given to an inmate that directs or forbids the doing of some act over which the inmate has control. An order may be written, verbal or gestured communication (including all Department of Corrections functional unit rules and procedures; all federal, state and local laws; and court ordered terms and conditions).

(29) Oregon Corrections Enterprises (OCE): A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(30) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises. For the purposes of this rule only, employee shall also include any person under contractual arrangement to provide services to the agency; any person employed by private or public sector agencies who is serving under agency-sanctioned special assignment to provide services or support to agency programs.

(31) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, electronic devices, firearms or other physical methods used to restrain, subdue, control, intimidate or to compel persons to act in a particular way or to stop acting a particular way.

(32) Physical Injury: Impairment of physical condition or substantial pain.

(33) Possession: To have physical possession of or otherwise exercise control over property.

(34) Security Device: Any fixture, device or tool, the purpose of which is to assist with safety or security.

(35) Security Threat Group (STG): Any group of two or more individuals who:

(a) Have a common name, identifying symbol, or characteristic which serves to distinguish themselves from others.

(b) Have members, affiliates, or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violates Oregon Department of Corrections rules.

(c) Have the potential to act in concert to present a threat, or potential threat, to staff, public, visitors, inmates, offenders or the secure and orderly operation of the institution.

(36) Serious Physical Injury: Injury that creates a substantial risk of death, causes serious and protracted disfigurement, impairment of health, loss or impairment of any bodily organ function, or death.

(37) Sexual Activity: Sexual contact including, but not limited to, sexual intercourse, deviate sexual intercourse, kissing, fondling, or manipulation of the genitalia, buttocks, and breasts of another person, or of oneself, in a manner that produces or is intended to produce sexual stimulation or gratification.

(38) Short-Term Transitional Leave: A leave for a period not to exceed 90 days preceding an established release date which allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community in accordance with ORS 421.148, 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves and Supervised Trips. The Department may grant a transitional leave of up to 30 days for inmates who are not participating in an alternative incarceration program.

(39) Temporary Segregation Status: Placement in a disciplinary segregation unit or local jail pending disciplinary hearing.

(40) Working Day: Monday through Friday, excluding weekends and holidays.

(41) Working File: Those documents maintained in a Department of Corrections facility or community corrections office for administrative and case management purposes.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0021
Procedures for Handling Misconduct by Inmates

(1) Corrective Action: DOC or OCE employees shall be expected to use less than formalized procedures if the act(s) of misconduct do not constitute a threat to life, health, facility security or good order, employee authority or property and in a manner that promotes and embraces the Oregon Accountability Model. Corrective action may include: reprimand, warning and counseling, and as authorized by the functional unit manager or officer-in-charge, loss of leisure activities conduct order (CD 708) for no more than 72 hours.

(a) Staff issuing a conduct order shall promptly notify the inmate of the action.

(b) Staff issuing a conduct order shall promptly complete the conduct order and forward it to the officer-in-charge or designee for review.

(c) The officer-in-charge or designee shall review and approve, cancel or modify the conduct order within four hours or as soon as practicable of it being issued by staff. If the officer-in-charge or designee determines that the incident warrants a misconduct report rather than a conduct order, the officer-in-charge or designee will ensure the conduct order is cancelled.

(d) A copy of the conduct order shall be delivered to the inmate within four hours or as soon as practicable.

(2) Misconduct Reports:

(a) When the misconduct justifies submission of a misconduct report, the DOC or OCE employee shall file a misconduct report with an immediate supervisor or the officer in charge no later than 24 hours AFTER sufficient evidence is gathered, discovered, or observed to support a charge of violation of rules. Determination of the sufficiency of evidence shall be a matter of judgment for the employee submitting the report and the immediate supervisor reviewing the report.

(b) The reviewing supervisor will ensure the report is accurate, appropriate and supported by sufficient information. The supervisor will then sign the report. The reviewing supervisor or designee shall be responsible for providing the inmate with a copy of the misconduct report, rules of prohibited conduct, and the notice of hearing and inmate rights within 24 hours of the filing of the report unless the inmate is unavailable to be served.

(c) The hearing may be held within 24 hours with the inmate's consent.

(d) The misconduct report shall be submitted on a Department of Corrections form, and shall be as specific and comprehensive as possible. The misconduct report shall include a description of any unusual relevant inmate behavior and information regarding how the employee became aware of the behavior. The misconduct report must contain sufficient and complete facts to support the alleged rule violation(s), including a description of what the restitution is for and the amount of restitution to be ordered, if it is possible to determine.

(e) The misconduct report must specifically allege all the major or minor rule violations the inmate is alleged to have violated, and demonstrate conduct constituting an attempt or conspiracy. Neither the hearings officer nor the adjudicator may add or change any violations. The hearings officer may find the inmate in violation of lesser included violations.

(f) Reports from DOC or OCE employee witnesses shall also be submitted.

(g) When the alleged misconduct occurs while the inmate is in the temporary physical custody of a jurisdiction other than the Department of Corrections, employees from that jurisdiction may provide a written description of the misconduct to Department employees.

(A) On review of such written information, the officer-in-charge at the facility receiving the inmate back into the physical custody of the Department may determine that the described action violates a rule(s) of prohibited inmate conduct and direct that a misconduct report be submitted.

(B) The written description provided by the temporary custody jurisdiction shall accompany the misconduct report. A misconduct report shall not be submitted absent a written description of the allegation from the temporary physical custody jurisdiction.

(C) If it is determined that the other jurisdiction maintained the inmate in a similarly restrictive status, the inmate shall be credited with the number of days he/she was held in segregation type status by the other jurisdiction.

(3) Temporary Placement in Disciplinary Segregation Status: An inmate charged with committing a rule violation may be placed in temporary disciplinary segregation status pending resolution of the charge. This action will be taken when the functional unit manager or the officer in-charge determines that the alleged rule violation charged is of such seriousness that the good order and security of the facility requires immediate removal of the inmate from the general population, or it is determined the inmate is a threat to the community or is likely to escape or abscond.

(a) If temporary disciplinary segregation status is ordered, the officer in charge must complete the portion of the Department of Corrections misconduct report specifying the reason(s) why immediate temporary disciplinary segregation of the inmate was deemed necessary.

(b) A completed copy of the Department of Corrections misconduct report will be forwarded to the functional unit manager or designee who will review the inmate's pre hearing detention status within 72 hours of the inmate's placement in temporary disciplinary segregation status. If approved, the functional unit manager or designee will initial the report. If the inmate is temporarily confined in a local jail while on short term transitional leave or emergency leave, the functional unit manager or designee will be notified for review of the inmate's status, within 72 hours of the inmate's confinement.

(4)(a) Scheduling a Hearing:

(b) An inmate charged with a rule violation shall be scheduled for a hearing as soon as practicable.

(5) Initiating a Hearing:

(a) A hearing shall be initiated within seven calendar days (including Saturdays, Sundays, and legal holidays) if the inmate is placed in temporary segregation status.

(b) All other hearings shall be initiated as soon as practicable. For significant delays, reasons for longer timeframes shall be made part of the hearing record.

(c) When an inmate charged with a Level I or Level II rule violation is released from custody prior to a hearing being held, a hearing will be initiated as soon as practicable upon his/her return to DOC custody.

(d) The hearing may be postponed or continued for a reasonable period for good cause as provided in OAR 291-105-0064. The reason(s) for the postponement or continuance shall be made part of the record.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0026
Hearings Officers Responsibilities

(1) Unless waived by the inmate, a formal hearing shall be conducted by the hearings officer on all misconduct reports classified by the adjudicator as charging a major rule violation(s), and included minor violation(s), and on all misconduct reports charging a minor rule violation(s) for which an inmate requests a formal hearing.

(2) Prior to the formal hearing, the hearings officer shall review the misconduct report alleging major rule violation and, if there is no prima facie case for a major rule violation, dismiss the major violations and refer the minor violations back to the adjudicator for an informal hearing. The hearings officer may substitute minor violations as lesser included violations.

(3) The hearings officer shall not have been a witness to the event, have personal knowledge of any material, disputed fact relating to the case or have participated in the case as a charging or investigating officer.

(4) The hearings officer will conduct the hearing and shall decide, based upon the evidence, whether the inmate has violated the rule(s) as charged in the misconduct report. The hearings officer may not add or change the violation(s) in the misconduct report. The hearings officer may find a violation of a lesser included violation (see Definitions).

(5) The hearings officer may dismiss the alleged rule violation(s) at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. An alleged rule violation(s) dismissed without prejudice may be resubmitted in another misconduct report utilizing the same process as provided in OAR 291-105-0021(2).

(6) The hearings officer or other employees as requested by the hearings officer shall report disciplinary actions which involve security threat activity to the facility's security threat manager.

(7) Behavioral Health Services staff will be notified when inmates with either mental health or developmental disability issues are placed in disciplinary segregation or are scheduled for a disciplinary hearing.

(a) Behavioral Health Services staff will then determine whether an evaluation shall be submitted to the hearings staff in the institution housing the inmate.

(b) If an evaluation is to be provided, Behavioral Health Services staff will contact hearings staff within two working days of receiving notification and advise them that an evaluation will be submitted for consideration at the hearing. Behavioral Health Services staff will include the timeline for submission of the evaluation.

(c) The hearings officer will postpone the hearing if necessary, to ensure that such an evaluation is considered in the case at issue.

(8) The mental health evaluation shall address the following:

(a) Did the inmate's mental health status contribute to the alleged violation(s)?

(b) Is the inmate able to understand the charges and the hearings process?

(c) From a mental health standpoint, should sanctions be modified or are sanctions for the alleged misconduct contraindicated?

(9) If a mental health evaluation is not provided by Behavioral Health Services staff prior to the inmate's hearing, the hearings officer may request a mental health evaluation be completed on the inmate prior to disposition of the hearing.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1987, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD

9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0028
Conduct of Formal Hearings on Major and Minor Violations

(1) Unless waived by the inmate, a formal hearing shall be conducted by the hearings officer on all misconduct reports charging a major rule violation(s), and included minor violations, on all misconduct reports charging a minor rule violation(s) for which an inmate requests a formal hearing, and on all misconduct reports referred by the adjudicator for a formal hearing in accordance with OAR 291-105-0041(6).

(2) The findings must be on the merits. Technical and clerical errors in the writing or processing of the misconduct report should not be grounds for dismissal, unless there is substantial prejudice to the inmate.

(3) Standard of Proof: Rules violation(s) shall be found upon proof by a preponderance of the evidence. The term preponderance of the evidence means the greater weight of evidence (e.g., 51% vs. 49%). It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate.

(4) The hearings officer shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

(5) Once the formal hearing has begun, if the hearings officer determines that the major violations are not supported by the facts as written in the misconduct report, the hearings officer may substitute appropriate minor violations as lesser included violations and proceed with the hearing.

(6) At the hearing, the inmate will be allowed to speak in his/her own behalf, exercise his/her rights, and submit evidence as allowed in OAR 291-105-0056.

(7) The hearings officer may pose questions during the hearing.

(8) An investigation shall be conducted in a formal hearing upon the inmate's request if the information sought, taken in the light most favorable to the inmate, together with reasonable inferences to be drawn from the information, would constitute a defense to the charge or substantially mitigate the violation. The information sought must be within the ability of the facility to procure. If a request for investigation is denied, the reason(s) for denial shall be made a part of the record.

(9) Testimony of Witnesses:

(a) The hearings officer shall direct the scheduling and taking of testimony of witnesses at the hearing. Witnesses may include inmates, employees, or other persons. Testimony may be taken in person, by telephone, or by written report or statement.

(b) The inmate may request that the hearings officer schedule witnesses to present testimony at the hearing. The request should be submitted to the hearings officer in writing in advance of the hearing, and include a list of the person(s) the inmate requests be called to testify and the questions sought to be posed to each person. Requests for witnesses must minimally be made to the hearings officers at the time of the hearing. The hearings officer shall arrange for the taking of testimony from such witnesses as properly requested by the inmate, subject to the exclusions and restrictions provided in these rules. Requests for witnesses made or received after a hearing is decided will not be considered.

(c) The inmate shall not directly pose questions to any witness.

(d) The hearings officer may limit testimony when it is cumulative or irrelevant.

(e) The hearings officer may exclude a specific inmate or employee witness upon finding that the witness' testimony, if taken in the light most favorable to the inmate, together with the reasonable inferences to be drawn from that testimony, would not constitute a defense to the charge or substantially mitigate the violation, or that the witness' appearance at the hearing would present an immediate undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. If a witness is excluded, the reason(s) shall be made a part of the record.

(f) The hearings officer may exclude other persons as witnesses upon finding that the witness' testimony would not assist the hearings officer in the resolution of the disciplinary action, or that the witness' appearance at the hearing would present an undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(g) The hearings officer may, on his/her own motion, call witnesses to testify.

(h) Witnesses requested by the inmate may refuse to testify.

(i) Persons requested as witnesses, other than inmates or employees, may refuse to appear or testify.

(j) All questions that may assist in eliciting evidence that, if taken in the light most favorable to the inmate, together with the reasonable inferences to be drawn from that evidence, would constitute a defense to the charge or substantially mitigate the violation shall be posed. The reason for not posing a question will be made part of the record.

(k) Confidential Informants:

(A) When confidential informant testimony is submitted to the hearings officer, the identity of the informant and the verbatim statement of the informant shall be submitted to the hearings officer in writing using form CD 1276, but shall remain confidential in accordance with OAR 291-105-0036(3).

(B) In order for the hearings officer to rely on the testimony of a confidential informant, information must be submitted to the hearings officer from which the hearings officer can find that the informant is a person who can be believed or that the information provided in the disciplinary action at issue is truthful.

(10) Documents and Physical Evidence:

(a) An inmate participating in a formal disciplinary hearing may present documents and physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules.

(b) The reporting employee(s) or agent(s) of the Department of Corrections or Oregon Corrections Enterprises who are knowledgeable of the rule violation(s) charged in the misconduct report(s) may submit documents and physical evidence in advance of or during the hearing.

(c) The hearings officer may exclude documents and physical evidence upon finding that such evidence would not assist the hearings officer in the resolution of the disciplinary action, or that such evidence would present an undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(d) The hearings officer may classify documents and physical evidence as confidential upon finding that disclosure would present an undue risk to the safe, secure, or orderly operation of any Department of Corrections facility, specifically including the safety and security of DOC or OCE employees and inmates, or that disclosure would interfere with an ongoing official investigation. The reason(s) for classifying documents and physical evidence as confidential shall be made a part of the record. Documents and physical evidence classified as confidential by the hearings officer shall not be shown or otherwise provided to the inmate.

(e) The hearings officer may show to the inmate or read into the record documents received in evidence. However, the hearings officer will not provide copies of the documents to the inmate. Inmates may request and obtain copies of nonexempt records in accordance with the Department's rule on Release of Public Records (OAR 291-037).

(11) The hearings officer shall determine whether a violation has occurred and, if so, impose the appropriate sanction on the grid. The hearings officer may postpone the rendering of a decision for a reasonable period of time, not to exceed three working days, for the purpose of reviewing the evidence and imposing the appropriate sanction. The decision will be based solely upon information obtained in the hearing process, including DOC or OCE employee reports, the statements of the inmate charged, and evidence derived from witnesses and documents.

(12) At the formal hearing the hearings officer shall decide:

(a) No Violation: The hearings officer may find that the inmate did not commit the violation(s) charged, in which case the inmate may be restored to similar status and privileges as before he/she was charged, as allowed by other rules, policies, etc.

(b) Violation: The hearings officer may find that the inmate committed the violation(s) charged, in which case, the hearings officer will so inform the inmate.

(c) Dismissal: The hearings officer may dismiss the alleged rule violation(s) without entering a finding if:

(A) There is insufficient evidence to support the alleged violation(s);

(B) Corrective action using less formalized procedures would be more appropriate; or

(C) The inmate is released from custody.

(D) Violation of Transitional Leave: When conduct constitutes a violation of the inmate's condition(s) of transitional leave, the hearings officer shall also recommend revocation of his/her transitional leave.

(13) At the conclusion of the hearing, the inmate shall be informed of the finding and any sanctions imposed.

(14) If no violation is found or all of the alleged charges are dismissed on the misconduct report(s), the report(s) shall not be placed in the inmate's file, but may be retained for statistical or litigation purposes in the Hearings Section records.

(15) Upon the finding of violation(s) by the hearings officer, the hearings officer shall:

(a) Determine the location of the violation(s) on the major or minor grids (Exhibits 1 and 2).

(b) Determine the inmate's prior misconduct history as recorded on the Disciplinary Misconduct System. (Evidence of the inmate's prior misconduct history shall be placed in the record either orally or in writing.)

(c) Determine which box on the grid is appropriate for the inmate's misconduct and his/her prior misconduct history.

(d) Impose sanctions within the range of sanctions in the appropriate box.

(e) Determine if a deviation (upward or downward) is appropriate. The hearings officer must document in writing the substantial reasons for the deviation in accordance with OAR 291-105-0072.

(f) Determine if consecutive sanctions are appropriate for separate rule violations arising from a single misconduct report. The hearings officer must document in writing the substantial reasons for consecutive sanctions, in accordance with OAR 291-105-0066(4)(b).

(16) The hearings officer may also consider imposing the additional sanctions that are available in the major range of sanctions (OAR 291-105-0069).

(17) The hearings officer may suspend imposition of any or all of the imposed disciplinary sanctions, informing the inmate of expected conduct to avoid imposition and the length of time for which the sanction will be suspended.

(18) The hearings officer may impose any or all sanctions previously suspended, after finding that the rule violation in question was also a violation of the conditions of the suspension.

(19) A verbatim record of the hearing shall be made. A written record will be made of the decision and the supporting reasons.

[ED. NOTE: Exhibits & Forms referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: Formerly Exhibit 2 to OAR 291-105-026; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 19-2001(Temp), f. & cert. ef. 12-3-01 thru 6-1-02; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0041
Adjudicator Responsibilities

(1) An adjudicator and designated alternate(s) shall be appointed by the functional unit manager in each Department of Corrections facility.

(2) Duties and Powers of the Adjudicator: The adjudicator will receive all misconduct reports, once they have been reviewed and approved by a reviewing supervisor and a copy has been provided to the inmate. The adjudicator shall:

(a) Promptly forward the misconduct reports to the hearings section for entry into the Disciplinary Misconduct System (DMS) and assignment of a case number. The hearings section will promptly return misconduct reports charging only minor rule violations to the adjudicator once they have been entered into the DMS and assigned a case number.

(b) Refer all major reports and all minor reports for which the inmate requests a formal hearing to the hearings officer who shall proceed in accordance with OAR 291-105-0028. If a case contains both major and minor violations, the entire incident, even if it involves more than one inmate, shall be handled by the hearings officer in a formal hearing.

(c) Conduct an informal hearing on minor reports in accordance with OAR 291-105-0046.

(3) The adjudicator shall not have been a witness to the event, have personal knowledge of any material, disputed fact relating to the case or have participated in the case as a charging or investigating officer.

(4) The adjudicator shall conduct the informal hearing and decide whether the inmate has violated the rule(s) as charged in the misconduct report. The adjudicator may not add or change the violations in the misconduct report.

(5) The adjudicator may dismiss the misconduct report(s) at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. A new misconduct report dismissed without prejudiced may be resubmitted utilizing the same process as provided in OAR 291-105-0021(2).

(6) The adjudicator may decline to conduct an informal hearing and refer the case to the hearings officer for a formal hearing when the inmate's mental competency is an issue.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85 CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0046
Conduct of the Informal Hearings on Minor Violations

(1) An informal hearing shall be conducted by the adjudicator or designee on all misconduct report(s) which do not charge a major violation(s), unless the inmate requests a formal hearing, in writing, on the Notice of Inmate Rights form, prior to the informal hearing.

(2) Findings by the adjudicator or designee must be on the merits. Technical and clerical errors in the writing or processing of the misconduct report shall not be grounds for dismissal.

(3) The adjudicator or designee shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

(4) Standard of Proof: Rule violation(s) shall be found upon proof by a preponderance of the evidence. The term preponderance of the evidence means the greater weight of evidence (e.g., 51% vs. 49%). It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate.

(5) The inmate shall be given the opportunity to speak in his/her own behalf, exercise his/her rights, and submit evidence as set forth in OAR 291-105-0056. Inmates shall not be permitted to call witnesses in an informal hearing.

(6) The adjudicator may pose questions during the hearing.

(7) Documents and Physical Evidence:

(a) An inmate participating in an informal disciplinary hearing may present documents and physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules.

(b) The reporting employee(s) or agent(s) of the Department of Corrections or Oregon Corrections Enterprises who are knowledgeable of the rule violation(s) charged in the misconduct report(s) may submit documents and physical evidence in advance of or during the hearing.

(c) The adjudicator designee may exclude documents and physical evidence upon finding that such evidence would not assist the adjudicator in the resolution of the disciplinary action, or that such evidence would present an undue risk to the safe, secure or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(d) The adjudicator or designee may classify documents and physical evidence as confidential (and not disclose such evidence to the inmate) upon finding that disclosure would present an undue risk to the safe, secure or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates, or that disclosure would interfere with an ongoing official investigation or criminal prosecution. The reason(s) for classifying documents and physical evidence as confidential shall be made a part of the record.

(8) At the informal hearing the adjudicator or designee shall decide:

(a) No Violation: The adjudicator or designee may find that the inmate did not commit the violation charged, in which case the inmate will be restored to the same status and privileges as before he/she was charged.

(b) Violation: The adjudicator or designee may find that the inmate did commit the violation charged, in which case, the adjudicator will so inform the inmate.

(c) Dismissal: The adjudicator or designee may dismiss the alleged rule violation(s) without entering a finding if:

(A) There is insufficient evidence to support the alleged violation(s); or

(B) Corrective action using less formalized procedures would be more appropriate; or

(C) The inmate is released from custody.

(9) At the conclusion of the hearing the inmate shall be informed of the finding and any sanctions imposed.

(10) If the inmate is found in violation, the record of the decision shall be retained in the Hearings Unit records for a minimum of two years.

(11) Upon finding that a violation occurred as charged, the adjudicator or designee shall:

(a) Determine the location of the violation(s) on the minor disciplinary grid (Exhibit 2).

(b) Impose sanctions within the range of sanctions in the appropriate box.

(12) The adjudicator or designee may also consider imposing the additional sanctions that are available in the minor range of sanctions (OAR 291-105-0071).

(13) The adjudicator or designee may suspend imposition of any or all of the ordered disciplinary sanctions, informing the inmate of expected future conduct to avoid imposition and the length of time for which the sanction will be suspended.

(14) The adjudicator may impose any or all sanctions previously suspended, after finding that the rule violation in question was also a violation of the conditions of the suspension.

(15) The adjudicator or designee may give a verbal warning and reprimand in lieu of sanctions on the minor grid, informing the inmate of expected future conduct.

(16) No verbatim recording of the hearing shall be made.

(17) If the inmate is transferred to another facility before the informal hearing is complete, the misconduct report shall be forwarded to the other facility for processing.

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

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 30-1985, f. & ef. 8-16-85; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0056

Inmate Rights in Formal and Informal Hearings on Major and Minor Violations

(1) Hearing:

(a) An inmate shall be entitled to a hearing whenever a misconduct report has been filed against him/her.

(b) An inmate receiving a minor misconduct report shall not receive a formal hearing, unless he/she specifically requests a formal hearing.

(2) Waiver of Hearing:

(a) In all cases, the inmate may waive the right to a hearing. Waiver of right must be in writing, verbally, or through behavior and must be documented on the record. An inmate's refusal to attend the hearing will constitute a waiver.

(b) An inmate waiving his/her right to a hearing shall have his/her case reviewed on its merits by the hearings officer or adjudicator in accordance with the procedures outlined in these rules.

(3) Notice of Hearing:

(a) The inmate shall be given written notice of the hearing not less than 24 hours prior to the hearing, unless the inmate consents to holding the hearing within 24 hours after the misconduct report has been served on the inmate.

(b) The notice shall include a statement of the inmate's rights with respect to the hearing.

(4) Representation:

(a) In all cases, the inmate shall be entitled to:

(A) Speak in his/her own behalf.

(B) Be present at all evidentiary stages of the hearing process, except when the hearings officer or adjudicator finds that to have the charged inmate present would constitute an immediate threat to facility security or the inmate's behavior during the hearing warrants exclusion. The reason(s) for the finding shall be part of the record.

(C) Inmates shall be excluded during the testimony of any witness whose testimony must be given in confidence. The reasons for the inmate's absence or exclusion shall be made part of the record.

(b) Assistance by a DOC or OCE employee, inmate, or other person approved by the adjudicator or hearings officer will be ordered in cases where it is found that assistance is necessary based upon language barriers or competence and capacity of the inmate to prepare a defense, to understand the charge or surrounding facts, and rights available to him/her.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0064

Postponements and Continuances of Formal and Informal Hearings on Major and Minor Violations

(l) A hearing may be postponed or continued by the hearings officer or the adjudicator for a reasonable period of time for good cause.

(2) "Good cause" includes, but is not limited to:

(a) Preparation of defense;

(b) Illness or unavailability of the inmate charged;

(c) Gathering of additional evidence (e.g., calling of witnesses, gathering of witnesses' statements, investigation, acquisition of physical evidence); or

(d) Avoiding interference with an ongoing police investigation or pending prosecution.

(3) The reason for the postponement in a formal hearing shall be stated on the record.

(4) If an inmate has been lodged in temporary disciplinary segregation pending a hearing and a continuance or postponement is ordered on the motion of the hearings officer, the hearings officer shall consider retention of the inmate in disciplinary segregation and:

(a) Determine that the inmate no longer presents a threat to security and recommend to the functional unit manager of the facility where the inmate is in disciplinary segregation, that the inmate be released from disciplinary segregation pending conclusion of the hearing; or

(b) Determine that the rule violation(s) alleged is serious that, if proven, the inmate would present an immediate and continuing threat to the safety, security or orderly operation of the facility and order, subject to the approval of the functional unit manager of the facility where the inmate is in disciplinary segregation, that the inmate be retained in disciplinary segregation. The written approval of the functional unit manager of the facility where the inmate is in disciplinary segregation shall be made a part of the record. In no case shall the inmate be retained in disciplinary segregation for a period longer than that permitted by the sanction in the appropriate box on the disciplinary grid.

(5) If an inmate has been lodged in temporary disciplinary segregation pending a hearing and a continuance or postponement is requested by him/her, the hearings officer shall not consider retention of the inmate in disciplinary segregation, and the inmate will be retained in disciplinary segregation. In no case shall the inmate be retained in disciplinary segregation for a period longer than that permitted by the sanction in the appropriate box on the disciplinary grid.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85 CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0066

Principles of Application of Disciplinary Sanctions

(1) A single act of misconduct may violate more than one misconduct rule.

(2) Loss of Privilege: If the inmate's misconduct involves the abuse or misuse of a specific privilege (i.e., recreation yard, canteen, etc.), the hearings officer or adjudicator may order a loss of that specific privilege, and may increase the loss of that specific privilege sanction up to twice the amount listed in the appropriate grid block.

(3) For rule violations arising out of separate misconduct reports, segregation sanctions shall be served consecutively, up to 180 days.

(4) For rule violations arising out of the same misconduct report:

(a) Concurrent segregation sanctions may be imposed by the hearings officer or functional unit manager, up to 180 days. The inmate shall be ordered to only serve the sanction for the most serious violation in the misconduct report.

(b) Consecutive sanctions may be imposed by the hearings officer or functional unit manager. The reasons for consecutive sanctions shall be supported by written substantial reasons outlining the factor(s) supporting the consecutive sanctions. No aspect of the misconduct that serves as a necessary element of misconduct may be used as an aggravating factor if that factor is also used to impose discipline.

(5) The Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions contains two inmate disciplinary grids. One grid governs inmate disciplinary action for major violations (Exhibit 1). One grid governs inmate disciplinary action for minor violations (Exhibit 2).

(6) Each of the inmate disciplinary grids shall outline the available sanctions within each box, which includes fines, segregation time and the loss of privileges.

(7) There are additional sanctions that will be available to the hearings officers and adjudicators at all levels of discipline for major violations and minor violations (OAR 291-105-0069 and 0071). These sanctions shall be applied consistently and in proportion to the violation and the inmate's prior misconduct.

(8) Merger and Consecutive Sanctions: In the case of multiple rule violations, a hearings officer or adjudicator shall impose a sanction or sanctions for only the single most severe or most applicable rule violation found as charged in a single misconduct report, except as specifically allowed by OAR 291-105-0066(4)(b). The applicable sanctions for the remaining rule violations shall be deemed to have merged with the sanction(s) imposed for the single rule violation, unless consecutive sanctions are imposed as authorized in 291-105-0066(4)(b).

(9) The hearings officer shall consider input from Special Management Unit or Behavioral Health Services Unit employees. The hearings officer may recommend sanctions be modified or are contraindicated, irrespective of the sanctions contained on the disciplinary grids and OAR 291-105-0069 and 0071.

(10) Limitations on the Length of Confinement in Disciplinary Segregation for Rule Violations:

(a) No inmate shall be confined in disciplinary segregation for more than 180 consecutive days. On the 180th consecutive day of confinement in disciplinary segregation, an inmate shall be reassigned and ordered to other housing. Once reassigned and ordered to other housing, the inmate shall be subject to additional confinement in disciplinary segregation (up to a maximum of another 180 days) as a sanction for a new rule violation, notwithstanding that the inmate remains in the segregation unit.

(b) Once an inmate has received the maximum sanction of 180 consecutive days, the hearings officer or adjudicator is not required to impose any additional segregation sanction. The hearings officer or adjudicator is also not required to order additional loss of privileges sanctions to an inmate who has already received the maximum 180 days segregation sanction, if he/she determines that the sanction would not be meaningful to the inmate. Such action shall be made a part of the written record of the hearing.

(c) New Violations Committed While Assigned to Disciplinary Segregation: If an inmate is ordered to serve an additional disciplinary segregation sanction for committing a new rule violation while assigned to disciplinary segregation, the additional disciplinary segregation sanction may be served consecutively to any prior segregation sanctions then being served, up to a maximum of 180 days.

(d) New Violations Committed While Assigned to Intensive Management Unit or IMU Status: An inmate who commits a new rule violation while assigned to the Intensive Management Unit (IMU), or while assigned to IMU status, shall not be ordered to serve a disciplinary segregation sanction for the violation. The inmate shall be subject to the range of additional sanctions described in OAR 291-105-0069 & 291-105-0071, including but not limited to fines and loss of privileges.

(11) When an inmate has been assigned to segregation as part of a disciplinary sanction that is Level I or Level II on the major violation grid and the inmate is temporarily transferred to the custody of a jurisdiction other than the Department, or is released from prison, he/she shall not be given credit for time served in segregation while he/she is out of Department custody.

(a) Once the inmate is returned to the Department's custody, the number of days he/she actually served in segregation will be subtracted from the total original sanction and he/she will serve the remainder of the segregation sanction in a Department segregation unit.

(b) If it is determined that the other jurisdiction maintained the inmate in a similarly restrictive status, the inmate shall be credited with the number of days he/she was held in segregation type status by the other jurisdiction.

(12) In those instances where there exists a need to create available bed space in a segregation unit, the functional unit manager or designee, in his/her sole discretion, may release an inmate(s) from segregation.

(a) At that point, the segregation sanction will be deemed to have been completed and the remaining segregation sanction will not be served as loss of privileges, while the inmate resides in the general inmate population.

(b) Any loss of privileges sanction ordered to be served upon the inmate's release from segregation, shall begin at the time the inmate is actually released from segregation.

(13) Inmates who commit a rule violation may be subject to classification review in accordance with the Department of Corrections rule on Classification (Inmate) (OAR 291 104).

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

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 29-1986, f. & ef. 8-20-86; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0069
Additional Sanctions for Major Violations

(1) The additional sanctions available to the hearings officer for major violations are:

(a) Restitution: Inmates shall be responsible for making full restitution for any damage or loss of property. In addition, inmates shall be financially responsible for all costs associated with or resulting from the violation. These shall include the costs of any drug urinalysis testing. There is no limit on the amount of restitution which can be imposed for a major sanction. There must always be a factual basis in the record to support the restitution amount and that amount must be reasonable.

(b) Confiscation of property or contraband.

(c) Reduction to Basic Visiting Status (non contact): For any major violation, basic visiting status may be imposed up to a maximum of 180 days for any one violation. Any inmate found in violation of Distribution I involving drugs, Drug Possession, or Contraband I involving drugs, drug paraphernalia, or drug testing including attempt or conspiracy, within the past two years shall be restricted to basic visits for each violation as follows:

(A) First violation: 1 year (365 days)

(B) Second violation: 2 years (730 days)

(C) Third or more violation(s): 4 years (1,460 days)

(i) Basic visiting sanctions shall be served consecutively to the conclusion of any assignment to disciplinary segregation or Intensive Management Unit.

(ii) Reduction to basic visiting status sanctions shall be served consecutively up to 7 years (2,555 days). No inmate shall serve more than 7 years (2,555 days) of consecutive reduction to basic visiting status sanctions at any one time.

(d) Extra Work Detail: For a major violation, the limit on extra work detail is a maximum of 80 hours, to be completed within 30 days after the Final Order has been signed.

(e) Revocation of short-term transitional leave and return the inmate to a Department of Corrections facility.

(f) Recommendation for no Favorable Future Consideration of Parole Release Date.

(g) Recommendation for an extension of parole release date in accordance with the rule on Prison Term Modification (OAR 291-097).

(h) Recommendation for reduction in earned time, statutory good time or extra good time credits in accordance with the rule on Prison Term Modification (OAR 291-097).

(2) Recommendations for reduction of earned time, statutory good time or extra good time and recommendations for an extension of parole release date shall be mandatory sanctions for all violations at level one of the major misconduct grid.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0071
Additional Sanctions for Minor Violations

Listed below in subsections are all the additional sanctions which are available to the hearings officers or adjudicator for a minor violation. They shall be applied consistently and in proportion to the violation and the inmate's prior misconduct history.

(1) Restitution: Inmates shall be responsible for making full restitution for any damage or loss of property. In addition, inmates shall be financially responsible for all costs with or resulting from the misconduct. There is no limit on the amount of restitution which can be ordered for a minor sanction. There must always be a factual basis in the record to support the restitution amount.

(2) Confiscation of property or contraband.

(3) Reduction to basic visiting status (non contact): For a minor violation, basic visiting status may be imposed up to a maximum of 28 days for any one violation.

(4) Extra work detail: For a minor violation, the limit on extra work detail is a maximum of 40 hours, to be completed within 30 days after the hearing.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0081
Adjustments to Final Orders

(1) Based upon an inmate's significant positive behavior change and after consideration of each individual inmate's particular circumstances, the functional unit manager or designee may make adjustments to final orders either at his/her discretion, or upon employee recommendation.

(2) Adjustments to segregation time and fine sanctions from final orders may not exceed the limits established in Exhibit 3.

(3) Adjustments of up to 50% of the total sanction accrued to that point in time may be made to basic visiting on a one-time basis only.

(4) Up to 50% of the cumulative total (at the time of restoration consideration) of previously retracted earned time, statutory good time or extra good time credits resulting from disciplinary sanctions may be restored. Earned time credits will be restored toward the most recent retraction and continue thereafter in reverse order. At no time will a restoration of earned time, statutory good time or extra good time credits cause an inmate's release date to move within 60 days of the date of the adjustment. Earned time, statutory good time and extra good time restored under this section can only be later retracted if the subsequent findings of fact is signed by the functional unit manager or designee after the date of the restoration.

(5) Adjustments to final orders shall be initiated and documented using the Adjustment to Final Order form (CD 1460). Copies of Adjustment to Final Order will be provided to appropriate sections for necessary action, including the hearings section where the amendment will be entered into the Disciplinary Misconduct System.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Hist.: DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0085
Administrative Review

(1) Any order for rule violations on Level I or Level II of the major violation grid or, which recommends an extension of the inmate's parole release date or retraction of earned time, statutory good time or extra good time credits; or which recommends a deviation from the segregation sanction listed on the grid is subject to review by the Inspector General.

(2) Petitions for administrative review must be filed by the inmate with the Inspector General within 60 calendar days after the Final Order is signed by the functional unit manager or his/her designee or after a preliminary order becomes the Final Order under OAR 291-105-0031. Filing a petition for administrative review shall not stay the imposition of a sanction.

(3) An inmate may file a petition for administrative review by completing the Department's Petition for Administrative Review form (CD 1442) and submitting it to the Inspector General. Petitions for administrative review shall minimally state the following:

(a) The date the hearing was completed and the hearing case number (i.e., 0104-A001-A03).

(b) The rule violation(s) which the inmate was found in violation or sanction which meets the review criteria listed in (1) above.

(c) Sufficient information to show why there was not substantial compliance with the rule, that the finding was not based upon a preponderance of the evidence or that the sanction imposed was not in accordance with provisions set forth in the rule (OAR 291-105).

(d) An inmate who attempts to file a petition for administrative review by use of an inmate communication form or any written communication other than the petition for administrative review form (CD 1142) shall have his/her communication returned with instructions that the inmate resubmit the petition on the proper form.

(4) Upon receipt of the petition for administrative review, the Inspector General or designee shall review the case to determine:

(a) Was there substantial compliance with the rule (OAR 291-105);

(b) Was the finding based upon a preponderance of evidence; and

(c) Was the sanction imposed in accordance with the provisions set forth in the rule (OAR 291-105).

(5) If the Inspector General or designee determines there was substantial compliance with the rule (OAR 291-105), the finding was based on a preponderance of evidence and the sanctions imposed were in accordance with the provisions set forth in the rule (OAR 291-105), he/she shall so inform the inmate.

(6) If the Inspector General or designee determines there was not substantial compliance with the rule (OAR 291-105), the finding was not based on a preponderance of the evidence or the sanctions imposed were not in accordance with provision set forth in the rule (OAR 291-105), he/she shall direct the hearing to be reopened or vacate all or part of the final order in the case.

(7) The Inspector General or designee shall provide the inmate with a written response to the petition for administrative review within 60 days from the date it is received by him/her. Documentation submitted to the Inspector General shall not be returned to the inmate.

(8) Petitions that are outside the criteria listed in OAR 291-105-0085(1) shall be returned without comment.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 32-1987(Temp), f. & ef. 8-5-87; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; Renumbered from 291-105-0073, DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

291-105-0100
Vacating or Amending the Final Order or Reopening a Hearing in the Interest of Justice

The Assistant Director for Operations or the Institutions Administrator may, in the interest of justice, vacate all or part of a final disciplinary order or direct that a disciplinary hearing be reopened for consideration of new evidence.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 14-2008, f. & cert. ef. 6-2-08

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Powder River Sport Spring Chinook Fishery.
Adm. Order No.: DFW 51-2008(Temp)
Filed with Sec. of State: 5-16-2008
Certified to be Effective: 5-31-08 thru 9-1-08
Notice Publication Date:
Rules Amended: 635-021-0090
Subject: This amended rule allows the sport fishing public to harvest spring Chinook salmon transported by Oregon Department of Fish & Wildlife staff from the collection trap at Hells Canyon Dam on the Snake River and released into the Powder River specifically for that purpose. Salmon returning to Hells Canyon Dam are predominantly the result of smolt releases intended to provide fisheries on the Snake River. Salmon trapped on the Snake River and then transported to the Powder River are in excess of the number needed to provide sport fisheries on the Snake River, The fishery is expected to run from Saturday, May 31 through Monday, September 1, 2008.
Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-021-0090
Inclusions and Modifications

(1) **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.

(3) 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 11-1-0 2 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08

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Rule Caption: Rules related to Holding of Cervids.
Adm. Order No.: DFW 52-2008
Filed with Sec. of State: 5-28-2008
Certified to be Effective: 5-28-08
Notice Publication Date: 3-1-2008
Rules Adopted: 635-049-0001, 635-049-0005, 635-049-0015, 635-049-0025, 635-049-0035, 635-049-0045, 635-049-0055, 635-049-0075, 635-049-0085, 635-049-0095, 635-049-0105, 635-049-0115, 635-049-0125, 635-049-0135, 635-049-0145, 635-049-0165, 635-049-0175, 635-049-0185, 635-049-0195, 635-049-0205, 635-049-0225, 635-049-0245, 635-049-0265, 635-049-0275, 635-049-0285
Rules Amended: 635-045-0002, 635-049-0090, 635-049-0200, 635-049-0210
Rules Repealed: 635-049-0000, 635-049-0010, 635-049-0020, 635-049-0030, 635-049-0040, 635-049-0050, 635-049-0060, 635-049-0070, 635-049-0080, 635-049-0100, 635-049-0110, 635-049-0120, 635-049-0130, 635-049-0140, 635-049-0160, 635-049-0170, 635-049-0171, 635-049-0180, 635-049-0190, 635-049-0220, 635-049-0230, 635-049-0240, 635-049-0250, 635-049-0330, 635-049-0340
Subject: Rules that govern holding and propagation of cervids in Oregon, and related issues.
Rules Coordinator: Colleen Munson—(503) 947-6035

635-045-0002
Definitions

(1) "Adult hunting license" is a resident or nonresident hunter's license, resident combination angler's and hunter's license, disabled war veteran's license, pioneer's hunting license or senior citizen's hunting and fishing license.

(2) "Agricultural lands" are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) "Antler Point" is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

(4) "Antlerless deer" means doe or fawn deer.

(5) "Antlerless elk" means cow or calf elk.

(6) "Application" means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications sent to the Department along with the proper remittance are used to generate the electronic form.

(7) "Baited Area" means an area where baiting has taken place.

(8) "Baiting" means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.

(9) "Brace" is defined as an orthosis that is prescribed by a physician and fabricated by an orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc.

(10) "Brace Height" is the distance from the back of the bow's riser at the handgrip to the string when the bow is at rest.

(11) "Buck Deer" means a male deer with at least one visible antler.

(12) "Buck Pronghorn" means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(13) "Bull elk" for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(14) "Calendar year" means from January 1 through December 31.

(15) "Carcass" is the skinned or unskinned body, with or without entrails, of a gamebird or game mammal.

(16) "Cascade elk" means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Spraque units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(17) "Closed season" is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(18) "Coast elk" means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

(19) "Commission" means the Oregon Fish and Wildlife Commission.

(20) "Controlled hunt" is a season where the number or distribution of hunters is limited through a public drawing or other means.

(21) "Department" means the Oregon Department of Fish and Wildlife.

(22) "Director" means the Oregon Fish and Wildlife Director.

(23) "Doe or fawn pronghorn" means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawns (young of the year) of either sex.

(24) "Domestic partner" as used in this rule means a person in a relationship with another person, each of whom:

(a) Is under no legal disability to marry the other person, but for the fact that each is of the same sex;

(b) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted it;

(c) Acknowledges and accepts financial obligations to the other person and to third parties equivalent to the financial obligation that arise within a marriage recognized under Oregon state law; and

(d) Is not married and has no similar commitment and responsibility to any other person.

(e) Has continuously lived for 6months with the other person

(25) "Eastern Oregon" means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(26) "Eastern Oregon deer" means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(27) "Eligible Hunter" means someone who will be 12 years of age by the time they hunt.

(28) "Entry permit" means a permit issued by the Department to be in an area where entry is restricted by regulation.

(29) "Established airport" is one that the Aeronautics Division has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(30) "Feral Swine" means animals of the genus Sus as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(31) "Fiscal year" means from July 1 through June 30.

(32) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(33) "Game Birds" are any waterfowl, snipe, band-tailed pigeon, dove, pheasant, quail, partridge, grouse, or wild turkey.

(34) "Game mammals" are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.

(35) "General season" is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.

(36) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(37) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(38) "Husbandry" means the care given animals directly by their owners and managers, including but not limited to:

(a) Nutrition;

(b) Breeding program;

(c) Veterinary medical care;

(d) Environmental cleanliness; and

(e) Humane handling.

(39) "Immediate family" for the purpose of Landowner Preference, means a landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.; for all other purposes, it means spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.

(40) "Inedible" means unfit for human consumption.

(41) "Landowner", as used in OAR chapter 635, division 075, means:

(a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or

(b) A corporation holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation shall be registered with the State of Oregon; and/or

(c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or

(d) Persons who hold title as part of a time share are not eligible for landowner preference.

(42) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(43) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(44) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.

(45) "On or within" means a straight line distance measured on a map.

(46)"One deer" means a buck, doe, or fawn deer.

(47) "One elk" means a bull, cow, or calf elk.

(48) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is not capable of being closed or covered by any permanent piece of the weapon.

(49) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for

(50) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.

(51) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.

(52) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.

(53) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(54) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(34) "game birds" as defined in OAR 635-045-0002(33), "furbearers" as defined in OAR 635-045-0002 (32), "threatened and endangered species" as defined in OAR 635-100-0125, and "nongame wildlife protected" as defined in OAR 635-044-0130.

(55) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal or furbearer.

(56) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(57) "Resident" is any person who has resided in Oregon for a period of at least six months immediately prior to the date of making application for a license or tag. Members of the armed forces assigned to permanent duty status in Oregon including spouses and dependent children, and foreign exchange students attending school in Oregon under a foreign student exchange program may purchase a resident license and tags. All other persons are nonresidents.

(58) "Resident juvenile" is any "Resident" of Oregon 14 through 17 years of age.

(59) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(60) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97; north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(61) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(62) "Sight bait" is exposed flesh bait within 15 feet of any leghold trap set for carnivores.

(63) "Spike deer" is a deer with spike (unbranched) antlers.

(64) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (brow tines are not considered an antler branch under spike-only regulations).

(65) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(41)(b).

(66) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(67) "Take" means to kill or obtain possession or control of any wildlife.

(68) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

(69) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90o or greater.

(70) "Unprotected Mammals and Birds" are European starling, house sparrow, rock pigeon and any mammal species for which there are no closed seasons or bag limits.

(71) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(72) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(73) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(74) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption, or, to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible.

(75) "Waterfowl" means ducks, geese, mergansers and coots.

(76) "Weapon" is any device used to take or attempt to take wildlife.

(77) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(78) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(79) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(80) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mammals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.

(81) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(82) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

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

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

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

Hist.: FWC 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997; f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0001
Policy

These rules govern holding and propagation of cervids in Oregon. Oregon's wildlife policy (ORS 496.012) requires the Fish and Wildlife Commission to prevent "serious depletion of any indigenous wildlife species." More specifically, ORS 497.228 requires the Commission to ensure that cervid propagation operations are conducted "in such manner as will not be harmful to existing wildlife populations." Accordingly, these rules regulate the private holding and propagation of cervids to protect the public's native wildlife. In particular, the Commission is concerned that unregulated holding of captive cervids would put the public's native wildlife at risk in terms of genetic pollution and disease.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0005
Definitions

The following define terms used in these Division 049 cervid-holding rules:

(1) "Cervids" are animals of the family Cervidae (deer, elk, moose, reindeer, and caribou).

(2) A "captive cervid" is any live cervid held in a state of more than temporary confinement.

(3) "Department", unless otherwise specified in these rules, means the Oregon Department of Fish and Wildlife.

(4) "Division Administrator" means the Wildlife Division Administrator of the Oregon Fish and Wildlife Department.

(5) "Director", unless otherwise specified in these rules, means the Director of the Oregon Department of Fish and Wildlife.

(6) "Double-fenced" means two parallel lines of fence spaced no less than 10 feet apart.

(7) "Escape" is when a captive cervid leaves a holding facility and wanders freely without an intentional or negligent act by the holder.

(8) A "hybrid" is an animal produced by crossing the sperm or egg of an individual of one species or subspecies with the egg or sperm of an individual of any other species or subspecies.

(9) "Native cervids" are those endemic to Oregon (mule deer, black-tailed deer, white-tailed deer, Roosevelt elk, Rocky Mountain elk and moose).

(10) "Non-native cervids" are cervids other than native cervids.

(11) "Person" means any individual, partnership, corporation, limited liability company, trust, association or governmental entity.

(12) "Release" is when a holder intentionally or through negligence allows a captive cervid to leave a holding facility and wander freely.

(13) A "wild cervid" is a native cervid born in the wild.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0015
Basic requirements

(1) Cervids may not be held except as authorized by a cervid license issued by the Department.

(a) To hold Rocky Mountain elk (Cervus elaphus nelsoni), Roosevelt elk (Cervus elaphus roosevelti), Sika deer (Cervus nippon), Muntjac deer (Muntiacus sp.), white-tailed deer (Odocoileus virginianus) or black-tailed deer (Odocoileus hemionus columbianus), a Type 1 license is required.

(b) To hold fallow deer (Dama dama) or reindeer (Rangifer tarandus), a Type 2 license is required.

(c) No other species or subspecies of cervids may be held under a cervid license.

(2) The following are exceptions to the cervid license requirements of subsection (1):

(a) A scientific take permit issued pursuant to OAR Chapter 635, Division 043 may authorize the holding of cervids for the purpose of scientific research;

(b) A wildlife rehabilitation permit issued pursuant to OAR Chapter 635, Division 044 may authorize the temporary holding of wild cervids for the purpose of rehabilitation and return to the wild;

(c) Public agencies may hold cervids as necessary in the performance of their official duties. Temporary holding of cervids by public agencies is not subject to these Division 049 rules. The Director may exempt a public agency's permanent holding of cervids from any or all of these Division 049 rules upon a finding that the operation would not tend to be harmful to existing wildlife populations and would significantly benefit the public.

(3) Hybridization of native cervids held in captivity is prohibited, except that:

(a) Hybrids of Rocky Mountain and Roosevelt elk may be held if specifically authorized in the license.

(b) Hybrids of native cervids and other native or non-native cervids may be held as part of a scientific effort if determined by the Director of the Department to be of overwhelming benefit to wildlife or wildlife habitat in Oregon and if specifically authorized as a condition of a license.

(4) No pairings between wild and captive cervids are allowed for the purpose of producing offspring unless specifically authorized as a license condition.

(5) If a licensed facility contains no cervids for more than 180 consecutive days, the license is deemed forfeited. Anyone whose license the Department proposes to forfeit may request a contested case hearing within 14 days of notice of the proposed decision.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0025
Import or Export

(1) It is unlawful to import live cervids. However, live reindeer that leave Oregon temporarily for educational or display purposes may return to Oregon upon obtaining any necessary Department of Agriculture permits, provided:

(a) The reindeer have had no contact with other cervids while outside Oregon; and

(b) The Department of Fish and Wildlife is notified each time before the reindeer re-enter Oregon.

(2) Cervid gametes or embryos may be imported into Oregon only under the following conditions:

(a) The person proposing to import provides the Department with documentation of the pedigree of the parents;

(b) The gametes or embryos are of the species or subspecies for which the recipient is licensed to hold; and

(c) The Department approves the import proposal in advance as posing no threat to native wildlife.

(3) Live cervids, gametes and embryos may be exported from Oregon, and cervid gametes and embryos may be imported into Oregon, only by a holder of an Oregon license valid for that species or subspecies, and provided that the licensee complies with all requirements of the Oregon Department of Agriculture governing transport, import and export in addition to provisions of OAR chapter 635 division 049.

(4) To the extent import or export of cervids, gametes or embryos is allowed by the above, any person proposing such import or export must obtain a permit from the Department of Fish and Wildlife in advance.

(5) Note the requirements of OAR 635-049-0265 governing transport of cervids.

(6) Effective January 1, 2009, it is unlawful for any person to export any bull elk that the person knows or should know will be used in a shooter bull operation. A "shooter bull operation" means a privately owned entity offering the hunting of bull elk for a fee or other remuneration within a fenced enclosure designed to prevent the elk's escape into the wild.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0035
Hunting of Privately held Cervids Prohibited

It is unlawful to hunt, kill, or attempt to hunt or kill cervids held by a private party; however:

(1) Any person may slaughter such a cervid for meat or leather production;

(2) Any person may euthanize such a cervid for scientific, health, safety or other valid husbandry concerns; and

(3) The Department's Wildlife Division Administrator may authorize any person to hunt or kill a captive cervid if the Division Administrator determines it would be in the best interest of sound wildlife management. The Division Administrator may impose conditions on such authorizations.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0045
Release or Escape of Captive Cervids

(1) It is unlawful to release, or to negligently allow to escape, any captive cervids without first obtaining a permit from the Department pursuant to ORS 498.052, or unless operating under a rehabilitation or scientific take permit.

(2) Any cervids that have escaped or been illegally released from captivity are deemed a public nuisance.

(3) Captive cervids that have escaped or been illegally released from a holding facility are unprotected wildlife, and therefore may be killed by any person authorized under provisions of 635-049-0035(3).

(4) Any person holding cervids other than under a rehabilitation or scientific take license or permit must notify the Department immediately of any release or escape of cervids and must, at their own expense, recapture or destroy the cervids within 72 hours of discovering the release or escape. If they do not recapture or destroy the released or escaped cervids within 72 hours, the Department or its agent may capture or destroy such cervids. The Department may seek reimbursement from the holder for any expenses the State of Oregon incurs in recovering, maintaining or disposing of such cervids, plus any damage to the state's wildlife or wildlife habitat. In deciding whether to seek reimbursement, the Department will consider the nature, scope and environmental impact of the release or escape, as well as whether the holder acted promptly and in a cooperative manner to deal with the release or escape. If the Department demands reimbursement, the holder must reimburse the Department in full within 30 days of receipt of the written demand.

(5) Any person holding cervids must keep wild cervids out of enclosures holding at least one captive cervid. If a wild cervid enters an enclosure holding at least one captive cervid, the holder must notify the Department and remove the wild cervid as soon as practicable.

(6) Notwithstanding subsection (4), if the Division Administrator determines that released or escaped cervids present an imminent danger to wildlife, the Division Administrator may take whatever action deemed appropriate, including destruction of the released or escaped cervids. Similarly, if the Division Administrator determines that a holder has failed to remove a wild cervid from an enclosure holding at least one captive cervid as soon as practicable, the Department may remove the wild cervid.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0055
Disease Testing

After consultation between the Department and the Department of Agriculture, the Commission will adopt a cervid disease surveillance list by rule and update it when necessary. The list shall include 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 will also address disease testing requirements and prohibitions for gamete or embryo transfer and importation. Any person holding cervids must comply with the requirements of the cervid disease surveillance list.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0075
Genetic Requirements

Any person holding cervids must comply with the following genetics management requirements:

(1) The holder must inform the Department in advance of any in vitro fertilization or artificial insemination of captive cervids;

(2) Upon demand by the Department, the holder must verify that a cervid born from in vitro fertilization or artificial insemination is of a species or subspecies authorized by the holder's license.

(3) The Department may, at its discretion and expense, subject any captive cervids to genetic analysis;

(4) If the Department determines that an unauthorized cervid exists at a cervid holding facility, the holder must have all cervids in the facility genetically tested as directed by the Department and at the holder's expense. An "unauthorized cervid" is one which was not listed in the holder's annual report for the previous year or one of a species or subspecies (or a hybrid of a species) which is not authorized by the holder's license.

(5) If the Department determines that a holder is holding any unauthorized cervids, the holder must kill or otherwise legally dispose of those cervids within 30 days of the Department's determination. The Department bears no liability for such a determination. "Otherwise legally dispose" means to legally export from Oregon or transfer to a licensed Oregon facility that is authorized to hold such cervids.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0085
Licenses Generally

(1) Cervid holding licenses must be renewed annually and are valid for as long as a licensee complies with all requirements of OAR chapter 635 division 049.

(2) Cervid holding licenses are specific to the holder and to the holding facility described in the license.

(3) When the Department issues or renews a license to a corporation, limited partnership or limited liability company or trust, the Department will require a joint and several personal guarantee from each shareholder, stockholder, limited partner, general partner, member, trustee, current beneficiary or other principal. The personal guarantee must address liability for costs as provided in OAR 635-049-0045.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0090
Requirements Upon the Death of Any Cervids Held

(1) Anyone possessing cervids under the provisions of OAR chapter 635, division 049 must, at their own expense, subject any animal that dies to necropsy by a licensed veterinarian and report the cause of death to the Oregon Department of Agriculture within 14 working days from date of death or completion of any required laboratory tests; unless death is due to obvious nondisease-related causes.

(2) The report must include examination and, where appropriate, test results for any communicable disease or parasite that may have, in the professional opinion of the veterinarian, led to or contributed to the cause of death of the animal.

(3) All annual reports submitted to the department with the required annual renewal must include the date and cause of death for any animals dying on the facility, including the name of the veterinarian who may have performed a necropsy.

(4) Animals subject to routine slaughter are exempt from this requirement.

(5) This section will be replaced by a new OAR 635-049-0065 when the Commission adopts a Cervid Disease Surveillance List.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: FWC 9-1993, f. & cert. ef. 2-8-93; DFW 15-2000, f. & cert.ef. 3-31-00; DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0095
Decision Standard for Issuing a License

The decision standard for issuing a cervid license is whether the proposed cervid holding operation would tend to be harmful to wildlife populations then existing in the wild, especially native wildlife. Any person whose license application the Department proposes to deny may request a contested case hearing within 14 days of notice of the proposed decision.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

645-049-0105
Decision Standard for Suspending, Revoking or Refusing to Renew a License

(1) The following are grounds for suspending, revoking or refusing to renew a license.

(a) That the licensee (or the licensee's officer, director, shareholder, partner, member, manager or employee) was convicted or admitted violation of these rules or any other provision of the wildlife laws at the licensed facility or in connection with the licensed operation; or

(b) A finding by the Department that continued operation would tend to be harmful to wildlife populations then existing in the wild, especially native wildlife.

(2) Any person whose license the Department proposes to suspend, revoke or refuse to renew may request a contested case hearing within 14 days of notice of the proposed decision.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0115
Disposition of cervids upon license suspension, revocation, nonrenewal or denial

(1) Within 90 days after any of the following events, any person holding cervids must dispose of the cervids:

(a) Suspension, revocation or expiration of the cervid license;

(b) Denial of an application for license; or

(c) Receipt of a notice from the Department informing the holder that the cervid(s) is/are not authorized by license.

(2) "Dispose" means to do the following in compliance with these rules:

(a) Kill;

(b) Transfer to another licensed facility; or

(c) Export from Oregon.

(3) If the holder fails to dispose of any cervids by the deadline specified in paragraph (1), and if the Department determines that the cervids pose an imminent threat to wildlife, livestock, or public health requiring prompt action, the Department may kill, confine, transfer, or otherwise dispose of the cervids as it determines necessary. In all other circumstances, the Department may kill, transfer, confine or otherwise dispose of the cervids only after providing the holder with notice and an opportunity for hearing. The Department may choose to keep the cervids on the holder's property until an appropriate means of disposal is found or pending a hearing. The Department bears no liability for such actions. Any cervids held for disposal must be treated humanely in compliance with these rules.

(4) The holders of any cervids of which the Department disposes pursuant to paragraph (3) must compensate the State of Oregon for any and all expenses incurred by the State during disposition.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0125
Control of Disease Outbreaks

(1) Diseased captive cervids posing an imminent danger to public health, wildlife or livestock constitute a public nuisance.

(2) Upon a finding that an outbreak of communicable disease among captive cervids poses imminent danger to public health, wildlife or livestock requiring prompt action, the Department may order the holder to destroy, confine or transfer by a specified deadline any or all cervids they hold.

(3) If a holder fails to take the action ordered by the Department pursuant to paragraph (2), the Department or its agents may enter the holder's facility and take the action. The holder is liable for any costs the State of Oregon so incurs. The Department bears no liability for such actions.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0135
General Requirements for Holding Cervids

NOTE: This section establishes general requirements applicable to all cervid holders. The sections governing Type 1 and Type 2 cervid licenses impose additional, more specific requirements concerning particular aspects of cervid holding

(1) A holder must treat captive cervids in a humane manner, and provide food and water in sufficient quantity and quality to maintain the cervids in a healthy condition. In addition, the holder must comply with ORS 167.310 through 167.340 inclusive (concerning humane treatment of animals) and any applicable requirements concerning water quality.

(2) A holder must maintain cervid holding facilities in a sanitary condition and provide adequate room for exercise.

(3) A holder must ensure that cervid holding facilities, including vegetation management and individual pasture and paddock size, allow daily, ground level observation of all cervids. "Ground level observation" does not necessarily require a single observation point. In addition to any applicable fencing standards under these rules, the following requirements apply:

(a) Maximum facility size is 300 contiguous acres, unless a facility plan has been approved by the Director as an exemption.

(b) A holder's facility must prevent ingress of wild cervids into the facility and egress of captive cervids from the facility, plus maintain complete separation of captive and wild cervids at all times.

(4) Holders must ensure that facility enclosures include handling facilities adequate to gather and hold cervids safely and efficiently for inspection, testing or quarantine.

(5) Each license authorizes only one facility. Satellite facilities are not allowed.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0145
Sale or Exchange

(1) The sale or exchange of live cervids, cervid embryos and cervid gametes is prohibited, except that live cervids, embryos and gametes may be sold or exchanged if legally held under an Oregon cervid license and only if:

(a) Sold to others who are authorized to hold cervids legally outside the state of Oregon; or

(b) Sold to or exchanged with the holder of an Oregon cervid license valid for that species or subspecies.

(2) Purchase, sale or exchange of cervid parts is governed by OAR chapter 635, division 200.

(3) Note the requirements of OAR 635-049-0265 governing transport of cervids.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0165
Type 1 Cervid Licenses

(1) A Type 1 cervid license is required to hold Rocky Mountain elk, Roosevelt elk, Sika deer, Muntjac deer, white-tailed deer or black-tailed deer. No hybrid cervids are allowed except as authorized in OAR 635-049-0015(3).

(2) A Type 1 cervid license is valid as long as the licensee complies with all requirements of these rules, but must be renewed annually.

(3) Type 1 cervid licenses are allocated as follows:

(a) The number of Type 1 cervid licenses for commercial or exhibition holding of Rocky Mountain elk, and/or Roosevelt elk and their hybrids is limited to 16. Commercial operations are those intending to sell elk or their parts or products. Exhibition operations are operations intending to display elk. These are the Type 1 commercial and exhibition licenses as of May 9, 2008:

Type 1 commercial and exhibition licenses as of May 9, 2008
License Number: 1106; 1107; 1203; 1301; 1303; 1304; 1305; 1401; 1404; 1405; 1406; 1407; 1703; 1704; 1705

(b) Licenses for commercial and exhibition holding are also subject to the following additional restrictions:

(A) New facilities for Type 1 cervid licenses for commercial or exhibition holding of Roosevelt elk must be located west of the crest of the Cascade Mountains.

(B) New facilities for Type 1 cervid licenses for commercial or exhibition holding of Rocky Mountain elk must be located east of the crest of the Cascade Mountains.

(C) No new Type 1 cervid licenses will be issued for commercial or exhibition holding of hybrids of Roosevelt elk and Rocky Mountain elk.

(c) Type 1 cervid licenses for commercial or exhibition holding of Sika deer, Muntjac deer, White-tailed deer or Black-tailed deer are limited to those issued on or before January 20, 1993.

(d) There is no limit on the number of licenses the Department may issue for holding Type 1 species for scientific research, education or conservation operations. Before a license can be issued for these purposes, the Director must first determine that the application is submitted by an individual or organization involved in a bona fide scientific research, education or conservation project and that the operation will result in an overwhelming benefit to wildlife or wildlife habitat in Oregon.

(4) Notwithstanding the above, if the Department chooses to place any cervid in its custody with a licensed facility, it may do so (with the

licensee's consent) regardless of whether that facility is licensed for that particular species.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0175
License Applications

(1) An applicant seeking a license for the first time must submit to Department headquarters the following information on a form provided by the Department:

(a) The species, subspecies and number of cervids to be held;

(b) Date of application;

(c) Location and size of facility;

(d) Whether the applicant is an individual, partnership, corporation, limited liability company or other legal entity. If a partnership, the application must provide the full names and addresses of the partners. If a corporation, the application must provide the full names and addresses of all officers, directors and stockholders. If a limited liability company, the application must provide the full names and addresses of all members and managers. If the applicant is structured as a tiered organization, the application must provide the full names and address of all of the partners; or officers, directors and stockholders; or members and managers of each constituent entity within the tiered organization;

(e) A diagram of the proposed facility and its relationship to local landforms (e.g., bodies of water, hills, roadways, etc.);

(f) A description of the applicant's technical ability to successfully maintain and operate a cervid holding facility;

(g) Whether the applicant (or any of its partners, officers, directors, shareholders, members, managers or employees) has been convicted of a felony or misdemeanor or otherwise found or admitted to have committed any violation (criminal or civil) involving natural resources (wildlife, forestry, fisheries, environment); and

(h) A statement from the appropriate local planning authorities that the proposed facility complies with the local comprehensive land use plan and land use ordinances.

(2) These timelines govern the Department's processing of a license application:

(a) Within 30 days of receiving an application, the Department must determine whether the application is complete or notify the applicant in writing of any deficiencies;

(b) Within 60 days of receiving a complete and accurate application, the Department must determine whether the applicant qualifies for a license and notify the applicant in writing of this decision.

(c) Upon qualification for a license, it is the applicant's responsibility to request a facility inspection by the Department. This inspection must occur within 30 days of the applicant's request and before cervids occupy the facility.

(d) Within 14 days after the inspection, the Department must inform the applicant in writing whether the facility passes inspection. If the Department determines that the facility does not pass inspection, it must inform the applicant of any deficiencies and allow the applicant 60 days to correct them.

(e) Within the 60-day period noted in paragraph (d), the applicant may ask the Department to reinspect the facility. The Department must reinspect within 30 days of such request. If the facility again fails to pass inspection, the application is deemed denied.

(f) Upon approving the facility, the Department will issue a license. Upon receipt of the license, the applicant may place cervids in the facility.

(3) The Department may grant a license only if it determines that:

(a) The operation will not tend to be harmful to wildlife populations existing outside the facility;

(b) The applicant has the technical ability to successfully operate and maintain a cervid facility;

(c) The applicant can be expected to comply with all legal requirements; and

(d) The proposed holding facility is adequate and complies with all legal requirements.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0185
Lottery for Elk Licenses Issued for Commercial or Exhibition Purposes

(1) If an elk holding facility license for commercial or exhibition purposes becomes available, the department may choose to allocate that license to a new applicant by lottery.

(2) To participate in the lottery, one must have qualified for a license as per OAR 635-049-0175(2)(b) and have paid a $100 nonrefundable application fee. The lottery drawing shall precede facility inspection.

(3) The department will conduct the lottery by drawing names of eligible entrants at random, then notifying the successful entrant in writing within 10 business days;

(4) If the lottery does not allocate all available licenses, the department will allocate remaining licenses to qualified applicants on a first-come, first-served basis.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0195
License Renewal

To renew a type 1 license, a licensee must submit a renewal request to the Department by November 30. Such a request must be made on the licensing form identified in OAR 635-049-0175 and note any and all changes that have occurred since the last license application was approved. OAR 635-049-0105 governs the Department's decision. A license will be deemed relinquished if a renewal application is not submitted by November 30. The license period is January 1 through December 31.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0200
Animal Marking Required for Cervid Propagation License — Type 1

(1) Persons holding cervids must register with the Oregon Department of Agriculture an individual brand, ear notch, approved combination of permanent ear tags, or other approved mark.

(a) This mark must be unique to the operation, and must be clearly visible and identifiable at a distance of 50 feet from the animals. All cervids held must be clearly identified with this approved mark unless exempted by the director.

(b) Marking registration must include the facility location, species held, name and address of the person holding the Cervid Propagation License — Type 1, and emergency telephone number(s) and contacts to be made should the animals be found in the wild.

(c) Upon issuance by the Oregon Department of Agriculture, the licensee shall submit a copy of the registration to the department's headquarters office. Any change in required information must be reported immediately to both agencies.

(2) In addition to the visible mark, all native cervids must be marked with a unique individual tattoo, an implanted micro identification transponder placed behind the left ear at the base (as is now in use in zoos in agreement with the protocol suggested by the Captive Breeding Specialist Group of the International Union for the Conservation of Nature), or a permanent ear tag issued by the North American Elk Breeders Association. These individual markers must correspond with records indicating the facility of origination, the year of birth or date of purchase, and a unique number or letter combination for each individual animal.

(a) This unique mark must be placed or implanted on the animals within 14 days of birth or purchase if the unique mark is not present on the animal when purchased.

(b) The unique mark must be recorded in the holder's records, and must be noted in any transfer or other transaction records or reports for each animal.

(3) The department may at a later date require a tissue sample of native cervids obtained by an ear punch to be desiccated and stored at a central repository for later DNA "fingerprinting."

(4) This section expires May 1, 2009 when it will be replaced by a new OAR 635-049-0255.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: FWC 9-1993, f. & cert. ef. 2-8-93; DFW 15-2000, f. & cert.ef. 3-31-00; DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0205
Record keeping

Licensees must keep accurate, legible and up-to-date records of:

(1) all movement of cervids (including gametes and embryos) into or out of their facility. At minimum, these records must include all sales, purchases, loans (of cervids), trades, or other such transactions involving cervids, cervid parts and cervid products, as well as any cervid births or deaths at the facility. Each record must refer to individual cervids by their unique mark and ear tag and list the names, addresses, and license or permit numbers of any individuals or entities involved in the transactions;

(2) Calving and fawning;

(3) Escape or release;

(4) Disease testing;

(5) Artificial insemination and embryo implants; and

(6) Each cervid's pedigree.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0210
Record Keeping Required for Cervid Propagation License — Type 1

Applications for annual renewal of a Cervid Propagation License — Type 1 must include a complete annual record of all transactions involving movement of animals off of or on to the approved facility, and of any births or deaths on the facility. This provision expires January 1, 2009, when it will be replaced by a new OAR 635-049-0235.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: FWC 9-1993, f. & cert. ef. 2-8-93; DFW 15-2000, f. & cert.ef. 3-31-00; DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0225
Inspection of Facilities and Records

(1) Each licensee must agree, as a condition of the license, to allow the Department, the Oregon Department of Agriculture, or the Oregon State Police to inspect any cervids, any records of the cervid holding operation and any facilities related to the holding operation. No advance notice is required, but in the absence of an emergency or other exigent circumstance such inspections will be limited to regular business hours (8 a.m. to 5 p.m.) seven days a week.

(2) Nothing in this rule authorizes the warrantless search of a residence.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0245
Fencing Requirements

To prevent contact between captive and wild cervids and therefore protect wild cervids from disease and genetic risks, a cervid holding facility subject to a Type 1 license must meet the following requirements:

(1) For new or transferred licenses: The facility must be double-fenced with wire mesh along its entire exterior perimeter boundary.

(2) For each of the facilities licensed as of May 9, 2008:

(a) If, at any time, the Department determines that the facility contains or contained a diseased cervid, the facility must be double fenced with wire mesh along its entire exterior perimeter boundary. A "diseased cervid" means a cervid infected with a disease listed on the Cervid Disease Surveillance List or a disease determined by the Department to pose a population health threat to Oregon's wild cervids. The licensee must comply with these fencing requirements within 30 days after receipt of the Department's determination or (if the captive cervid herd has been eliminated because of the disease) before placing new cervids in the facility.

(b) Until the Department determines that the facility contains or contained a diseased cervid, as provided in the foregoing paragraph (a), a facility must be at least single-fenced with wire mesh along the entire exterior perimeter boundary.

(3) Wire mesh fences must extend at least eight feet above ground level for their entire length. The bottom six feet must be woven wire mesh with 6-inch vertical spacing and graduated horizontal spacing from 3-inch at the bottom to 8-inch at the top; constructed with either hinge or knotted joints; and at least 12-1/2 gauge woven wire, 14-1/2 gauge high-tensile woven wire, or nonclimbable chain link. If more than one width of fencing material is used to attain the full eight feet in height, it must be overlapped one row and securely fastened at every other vertical row or woven together with cable. If supplemental wire is used to attain a height of eight feet, it may be smooth, barbed, or woven wire (at least 12-1/2 gauge) with strands spaced not more than six inches apart. Electric fencing may be used only to supplement the fencing requirements described above.

(4) Gates must be of a material that meets or exceeds the strength of the fence, and be equipped with two independent latching devices.

(5) At a minimum, fence posts must:

(a) Be either wood or metal. If wood, a corner post must be a minimum of 5 inches diameter at the small end and a line post must be a minimum of 4 inches at the small end. If metal, a post must be of "T" construction weighing at least 1.25 pounds per foot.

(b) Extend at least eight feet above ground level and at least two feet below ground surface;

(c) Be spaced no more than 16 feet apart. Wider spacing may be approved by the department for other posts and specific site conditions. Stays or supports must be placed between posts where necessary to maintain strength.

(d) Be braced at all corners with metal or wood of sufficient strength to keep captive cervids securely contained and to prevent wild cervids from entering.

(6) Where the facility includes a stream or other water body, the facility must provide cervid-proof swinging water gaps or stream crossings to prevent ingress and egress by cervids. Any such water gaps or crossings must be supported with steel cables and constructed to equal or exceed the standards of the fence.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0265
Transport of Cervids Among Licensed Facilities

(1) Cervids held under license may not be transported outside their licensed facility except:

(a) From one Oregon licensed cervid facility to another under a permit issued by the Department. The permit will specify any conditions necessary to protect native wildlife and to ensure safe and humane treatment of the cervids being transported.

(b) While being legally exported from Oregon under a permit issued by the Department, a certificate of veterinary inspection and any import permit or license required by the receiving state.

(c) Elk (legally captured from the wild in Oregon or bred from elk legally captured from the wild in Oregon) to and from an exhibition within Oregon under a permit issued by the Department, on the condition that the elk has no contact with, and will not be held in an area frequented by, any other cervid.

(d) As allowed by OAR 635-049-0025(1)(a) and (b) for reindeer.

(e) To a slaughtering facility.

(2) To obtain a permit, the holder must apply using a form provided by the Department and provide all requested details concerning the proposed transport.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0275
Requesting Changes to a License

(1) Change in the address (not location) of a licensed facility requires 21 days advance written notice to the Department, but does not require approval.

(2) Any proposed change in the species or subspecies held requires a new license application and Department approval.

(3) Any proposed change in the ownership or location of a licensee or a licensed facility requires a new license application and Department approval. Exception: Upon request, the Department may transfer a license held by an individual to a member of the individual's immediate family if there is no change in facility location. When the license holder is a business entity, "change in ownership" occurs when there is any change in stockholders, shareholders, partners or principals.

(4) Any transfer, or series of transfers, for any reason, that results in change of ownership of more than 25 percent of the shares of stock in a corporation, or partnership interests in a general or limited partnership, or membership interests in a limited liability company, or beneficial interest in

a trust, to which a cervid holding license was issued under this Division, constitutes an attempt to transfer the license. In this event, the cervid holding license must be revoked, unless, within 60 days of such transfer, the entity holding the license reapplies under OAR 635-049-0175, and the Department grants a new license.

(5) If the Department proposes to reject a change to a license, the licensee may request a contested case hearing within 14 days after mailing of the decision.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

635-049-0285
Decommissioning

(1) If a license is suspended, revoked or relinquished, or if any cervid herd is eliminated, the holder must maintain fences necessary to prevent ingress by wild cervids to areas once inhabited by captive cervids. The purpose of this requirement is to ensure that wild cervids do not access a site potentially contaminated with disease.

(2) A holder may ask the Department to lift the fencing requirement imposed by paragraph (1). Upon its determination that the site is not contaminated with a disease posing a threat to wildlife, the Department may rescind the fencing requirement and allow the site to be made accessible to wild cervids.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08

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Rule Caption: Amend rules to expand the list of Controlled species.
Adm. Order No.: DFW 53-2008(Temp)
Filed with Sec. of State: 5-28-2008
Certified to be Effective: 5-28-08 thru 9-19-08
Notice Publication Date:
Rules Amended: 635-056-0070, 635-056-0075
Subject: Amend rules to expand the "Controlled Species" classification list.
Rules Coordinator: Colleen Munson—(503) 947-6035

635-056-0070
Controlled Species

At the time the commission categorizes a species, subspecies or hybrid as Controlled, it shall also establish the controls necessary to protect native wildlife.

(1) Controlled Mammals

(2) Controlled Birds

(a) Mute swans (*Cygnus olor*): The possession, transport, sale, purchase, exchange and offer to sell, purchase or exchange is allowed provided that all males are neutered and all individuals are surgically pinioned. Importation of any mute swan is prohibited.

(b) Hawks and falcons (families Falconidae and Accipitridae): The capture, possession, propagation, transportation, release, sale, purchase, exchange and disposition of falcons is allowed only as per the requirements of OAR 635 division 44 (Holding, Propagating Protected Wildlife) and OAR 635 division 55 (Falconry Licenses, Permits and Requirements).

(c) Game birds: (Anatidae, Columbidae, Tetranidae, Phasianidae, Meleagrididae Gruidae, Rallidae). The possession, propagation, sale, purchase and exchange of game birds is allowed only as per the requirements of OAR 635 division 44 (Holding, Propagating Protected Wildlife).

(d) Unless authorized by the Department, European starling (*Sturnus vulgaris*) or House Sparrows (*Passer domesticus*) may not be imported into Oregon or released into the wild. However, viable eggs, nestlings, fledglings, or adults may be captured from the wild, possessed, bought or sold for any other purpose (including damage control, wildlife rehabilitation or research). Except for wildlife rehabilitation, no permit is required for such capture and possession. Release of these species by licensed wildlife rehabilitators shall occur at a location designated by the Department.

(3) Controlled Amphibians: Bullfrog (*Rana catesbeiana*) including viable eggs, hatchlings, tadpoles, juveniles and adults: No person may import, purchase, sell, barter or exchange, or offer to import, purchase, sell, barter or exchange live bull frogs. Individual bullfrogs may be collected from the wild and held indoors in an escape proof aquarium as per OAR 635-044-0035. Release is prohibited unless the person first obtains a permit from the Director.

(4) Controlled Reptiles

(5) Controlled Mollusks

(a) Suminoe oysters (*Crassostrea ariakensis*), Pacific oysters (*C.gigas*), Kumamoto oysters (*C. sikamea*), Eastern oysters (*C. virginica*), and European flat oysters (*Ostrea edulis*) may be purchased and imported from outside Oregon (or from other estuaries within Oregon) for release into estuaries in Oregon pursuant to the terms of a permit issued by the department. Complete permit applications must be submitted to the department's Marine Resources Program Headquarters (2040 SE Marine Science Drive, Newport, Oregon 97365) at least 15 days before proposed stocking. Oysters may be commercially harvested and sold pursuant to OAR 635-005-0001 through 635-005-0035.

(b) Softshell clam (*Mya arenaria*), Japanese varnish clam (*Nuttalia obscurata*i), and Japanese littleneck clam (*Venerupis philipinnarum*) may be harvested, possessed and sold commercially pursuant to OAR 635-005-0001 through 635-005-0035 or harvested and possessed recreationally pursuant to 635-039.

(6) Crustaceans Green crabs (*Carcinus maenas*) may be harvested recreationally pursuant to OAR 635-039. Once harvested, it is unlawful to return green crab to state waters. It is unlawful to take green crab for commercial purposes.

(7) Pacific White Shrimp (*Litopenaeus vannamei*; *Penaeus vannamei*): The possession, propagation, transportation, sale, purchase, exchange and disposition of Pacific white shrimp is controlled according to the following restrictions and standards:

(a) Parties will apply for and receive an approved propagation license from the Oregon Department of Fish and Wildlife Fish Propagation Program prior to commencing production;

(b) Propagation will occur in ponds covered with nets or screens adequate to prevent the capture or transport of cultured shrimp by predators or other animals;

(c) Access to production facilities will be through secure locked gates;

(d) Production facilities will discharge no water or waste effluent into any waters of the State;

(e) Only certified disease-free animals will be purchased for use on site;

(f) Adequate veterinary care will be provided to identify and minimize the spread of diseases originating from the animals being held;

(g) No live Pacific white shrimp may be released into waters of the State;

(h) No live Pacific white shrimp may be transferred off site without permission from the Oregon Department of Fish and Wildlife; and.

(i) An Oregon Department of Fish and Wildlife fish transport permit shall accompany live Pacific white shrimp imported into and transported within Oregon. If transport occurs entirely on the permittee's property, a transport permit is not needed. Any other permit or documentation required for fish import or transport shall also be obtained prior to importation.

(8) Malaysian Prawns (*Macrobrachium rosenbergii*): The possession, propagation, transportation, sale, purchase, exchange and disposition of Mayalsian prawns is controlled according to the following restrictions and standards:

(a) Parties will apply for and receive an approved propagation license from the Oregon Department of Fish and Wildlife Fish Propagation Program prior to commencing production;

(b) Propagation will occur in ponds covered with nets or screens adequate to prevent the capture or transport of cultured prawns by predators or other animals;

(c) Access to production facilities will be through secure locked gates;

(d) Production facilities will discharge no water or waste effluent into any waters of the State;

(e) Only certified disease-free animals will be purchased for use on site;

(f) Adequate veterinary care will be provided to identify and minimize the spread of diseases originating from the animals being held;

(g) No live Malaysian prawns may be released into waters of the State;

(h) No live Malaysian prawns may be transferred off site without permission from the Oregon Department of Fish and Wildlife; and

(i) An Oregon Department of Fish and Wildlife fish transport permit shall accompany live Malaysian Prawns imported into and transported within Oregon. If transport occurs entirely on the permittee's property, a transport permit is not needed. Any other permit or documentation required for fish import or transport shall also be obtained prior to importation.

Stat. Auth.: 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: FWC 69-1996, f. & cert. ef. 12-20-96; FWC 59-1997, f. & cert. ef. 9-3-97; DFW 63-1998, f. & cert. ef. 8-10-98; DFW 94-1999, f. & cert ef. 12-23-99; DFW 79-2000, f. & cert. ef. 12-22-00; DFW 116-2001, f. & cert. ef. 12-18-01; DFW 53-2008(Temp), f. & cert. ef. 5-28-08 thru 9-19-08

635-056-0075
Controlled Fish Species

(1) Grass carp (Ctenopharyngodon idella): Grass carp may be released into water bodies within Oregon only pursuant to the issuance of a permit from the Department. Complete permit applications shall be submitted to Department headquarters at least 60 days before proposed stocking.

(2)(a) The following restrictions and standards will govern the issuance of grass carp permits:

(A) Stocking will occur only in water bodies which are:

(i) Completely within private land; or

(ii) On land owned or controlled by irrigation districts or drainage districts.

(B) Stocking will occur only in the following types of water bodies:

(i) Lakes, ponds, or reservoirs less than 10 acres; or

(ii) Ditches and canals.

(C) Public use of the water body must be restricted to prevent removal of grass carp (by angling or otherwise) by unauthorized persons. At a minimum, the water body must be closed to angling and other use by the general public.

(D) Stocking shall not detrimentally affect any population of species listed as threatened or endangered by the federal or state government.

(E) Stocking shall occur only in water bodies with fish screens approved by the Department. Such screens shall have screen openings 1 inch or less for fish 12–19 inches total length and screen openings 2 inches or less for fish over 19 inches total length. Screens shall be inspected and approved by the Department before a permit will be issued. The applicant must comply with fish passage requirements (OAR 635, division 412); given grass carp screening requirements, this entails applying for and receiving a waiver or exemption from passage requirements if grass carp will be stocked into waters where native migratory fish are or were historically present.

(F) Stocking will not be allowed in water bodies within 100-year floodplains (as delineated by the Federal Emergency Management Agency on federal Flood Insurance Rate Maps) during times of potential flood. Times of potential flood are January 1 through July 31 in watersheds east of the Cascades and October 15 through May 31 in watersheds west of the Cascades. Grass carp will be removed from water bodies in a 100-year floodplain and held or disposed of during times of potential flood. If grass carp will be held and not disposed of, they shall be held at a permitted site outside the 100-year floodplain. Applications for sites within a 100-year floodplain shall contain a detailed removal plan which shall receive Department approval.

(G) Grass carp may only be purchased and imported from approved suppliers outside Oregon. Grass carp may not be propagated or held for further distribution within Oregon. Department pathologists shall approve suppliers. Approval will be based on ability to provide grass carp free of Asian tapeworms and meet health and disease requirements according to OAR 635-007-0555 through 635-007-0585.

(H) Grass carp imported into Oregon shall be:

(i) Sterile triploids. Documentation from the U.S. Fish and Wildlife Service that each fish is triploid must be submitted to the Department prior to release;

(ii) At least 12 inches long;

(iii) Tagged with a Passive Integrated Transponder (PIT) tag of frequency 134.2-kilohertz. Each tag shall be programmed with a unique identification number. A list of unique tag numbers shall be submitted to the Department prior to release; and

(iv) Stocked at a rate not exceeding 22 per affected acre.

(b) In addition to documentation relating to the restrictions above, each permit application shall include:

(A) Applicant's name, address and daytime telephone number. All property owners of the water body to which grass carp will have unrestricted access must be party to the application and permit;

(B) Location of the water body, including township, range, section and quarter section, with map including written directions for access;

(C) Map of the water body including, vegetation present in the water body, all inlets and outlets, and screen locations;

(D) Description of emergency procedures for responding to fish escapes from approved sites;

(E) Description of how fish will be removed and disposed of at the end of the proposed project.

(c) An application becomes the management plan upon approval. Permits and management plans shall be specific to particular sites and particular stocking projects. Permittees shall not deviate from permit conditions and management plans without prior written approval from the Department. No person may remove grass carp from one site (as identified in a management plan) and transport them to any other site without prior written approval from the Department.

(d) An Oregon Department of Fish and Wildlife fish transport permit shall accompany grass carp imported into and transported within Oregon. If transport is required within the management plan and occurs entirely on the permittee's property, a transport permit is not needed. Any other permit or documentation required for fish import, transport, or stocking shall also be obtained prior to importation and stocking.

(e) Permittees shall, as a condition of the permit, allow employees of the Department or the Oregon State Police to inspect at reasonable times the permitted water body, permit, and associated records. Inspection may take place without warrant or notice, but, unless prompted by emergency or other exigent circumstances, shall be limited to regular and usual business hours, including weekends. Nothing in these rules is intended to authorize or allow the warrantless search or inspection of property other than the water bodies or fish holding facilities on the permittee's property.

(f) Permits are revocable at any time for violation of any wildlife statute or rule of the Department. Upon revocation, if stocking has already occurred, the permittee shall remove all grass carp within two weeks at her/his own cost.

(g) Grass carp which escape a permitted water body are subject to seizure or destruction by the Department at the expense of the permit holder. The permit holder shall be held liable for incidental kill of any other species due to or during destruction of escaped grass carp.

(h) The Commission may grant an exception to OAR 635-056-0075(2)(a)(B) or (2)(a)(F). Exception requests must be submitted in writing in addition to the normal application and must address the requirements in this section. Unless the Commission determines that an alternative provides equivalent protection to fish and wildlife resources and their habitats, exceptions shall have the following additional requirements:

(A) If the water body into which grass carp will be stocked is greater than or equal to 10 acres a professional topographic survey by a licensed surveyor must be provided for the entire perimeter of the water body showing all points of water movement in and out of the water body. A topographic survey completed by a state or federal agency within five years from the date of application for the water body may be used. The Department shall determine screening requirements from the survey;

(B) Grass carp may remain in a water body within the 100-year floodplain year-round if a professional plan or drawing that is certified by a licensed engineer is provided which indicates that the entire perimeter of the water body is protected from 100-year floods. In order to prevent grass carp escape, screens, dikes, and devices protecting the water body must be able to remain structurally sound within 100-year floods and not be overtopped by a 100-year flood. The Department reserves the right to have a licensed engineer retained by the agency review and approve or deny the plan or drawing submitted by the applicant.

(3) Tilapia (Oreochromis mossambicus, O. nilotocus and hybrids thereof): The possession, propagation, transportation, sale, purchase, exchange and disposition of tilapia is controlled according to the following restrictions and standards:

(a) Parties will apply for and receive an approved propagation license from the Oregon Department of Fish and Wildlife Fish Propagation Program prior to commencing production;

(b) Propagation will occur in ponds covered with nets or screens adequate to prevent the capture or transport of cultured tilapia by predators or other animals;

(c) Access to production facilities will be through secure locked gates;

(d) Production facilities will discharge no water or waste effluent into any waters of the State;

(e) Only certified disease-free animals will be purchased for use on site;

(f) Adequate veterinary care will be provided to identify and minimize the spread of diseases originating from the animals being held;

(g) No live tilapia may be released into waters of the State;

(h) No live tilapia may be transferred off site without permission from the Oregon Department of Fish and Wildlife; and.

(i) An Oregon Department of Fish and Wildlife fish transport permit shall accompany live tilapia imported into and transported within Oregon. If transport occurs entirely on the permittee's property, a transport permit is not needed. Any other permit or documentation required for fish import or transport shall also be obtained prior to importation.

Stat. Auth.: ORS 496.012, 496.138 & 496.146
Stats. Implemented: ORS 497.308, 497.318, 498.022, 498.052 & 498.222
Hist.: DFW 63-1998, f. & cert. ef. 8-10-98; DFW 94-1999, f. & cert ef. 12-23-99; DFW 79-2000, f. & cert. ef. 12-22-00; DFW 116-2001, f. & cert. ef. 12-18-01; DFW 64-2003, f. & cert. ef. 7-17-03; DFW 53-2008(Temp), f. & cert. ef. 5-28-08 thru 9-19-08

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Rule Caption: Modifications to South west Zone sport Chinook salmon regulations for the Rogue River.
Adm. Order No.: DFW 54-2008(Temp)
Filed with Sec. of State: 5-28-2008
Certified to be Effective: 6-1-08 thru 7-31-08
Notice Publication Date:
Rules Amended: 635-016-0090
Subject: This amended rule will maximize the spawning escapement of naturally-produced spring Chinook, while continuing to allow opportunities for harvest of hatchery-produced spring Chinook.
Rules Coordinator: Colleen Munson—(503) 947-6035

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) Rogue River mainstem upstream to Elephant Rock (RM 3.0):

(a) From 12:01 a.m. June 1 thru 11:59 p.m. July 11, 2008 only adipose fin clipped Chinook salmon may be retained. Catch limits and other restrictions listed in the 2008 Oregon Sport Fishing Regulations for the Southwest Zone remain in effect.

(b) From 12:01 a.m. July 12 thru 11:59 p.m. July 31, 2008, 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 other 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.

(3) Rogue River mainstem from Elephant Rock upstream to Hog Creek boat landing: From 12:01 a.m. June 1 thru 11:59 p.m. July 31, 2008 only adipose fin clipped Chinook salmon may be retained. Catch limits and other restrictions listed in the 2008 Oregon Sport Fishing Regulations for the Southwest Zone remain in effect.

(4) Rogue River, Hog Creek boat landing to Gold Ray Dam: From 12:01 a.m. June 1 thru 11:59 p.m. July 31, 2008 only adipose fin clipped Chinook salmon may be retained. Catch limits and other restrictions listed in the **2008 Oregon Sport Fishing Regulations** for the Southwest Zone remain in effect.

(5) Rogue River, from Gold Ray Dam to Cole Rivers Hatchery Diversion Dam: From 12:01 a.m. June 1 thru 11:59 p.m. July 31, 2008 only adipose fin clipped Chinook salmon may be retained. Catch limits and other restrictions listed in the 2008 Oregon Sport Fishing Regulations for the Southwest Zone remain in effect.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, certe. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08

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Rule Caption: Modifications to the Recreational Spring Chinook Season in the Willamette Rover and Tributaries.
Adm. Order No.: DFW 55-2008(Temp)
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 6-2-08 thru 10-31-08
Notice Publication Date:
Rules Amended: 635-017-0090
Rules Suspended: 635-017-0090(T)
Subject: The Amended rule will close the Willamette River and its tributaries, including the Multnomah Channel, to the retention of spring Chinook salmon, with the exception of the Clackamas River up to North Fork Dam and the Molalla River which will remain open with a bag limit of two adult salmon per day, only one of which may be a Chinook.
Rules Coordinator: Colleen Munson—(503) 947-6035

635-017-0090
Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing** Regulations provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Carmen Reservoir (Linn County) is open to angling for trout all year.

(a) The daily catch limit for trout is 5 per day, minimum length is 8 inches, only 1 trout over 20 inches in length may be taken per day.

(b) Use of bait is allowed.

(4) Effective February 1, 2008 there are no size restrictions or bag limits on trout or warmwater fish in Roslyn Lake. All other General Statewide and Willamette Zone regulations as provided in the **2008 Oregon Sport Fishing Regulations** apply.

(5) Effective 12:01 a.m. June 2, 2008, the Willamette River and its tributaries, including the Multnomah Channel, will close to the retention of spring Chinook salmon, with the exception of the Clackamas River upstream to North Fork Dam and the Molalla River which will remain open to the retention of one adult adipose fin-clipped spring Chinook per day as part of the daily bag limit. All other regulations as provided in the **2008 Oregon Sport Fishing Regulations** apply.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp) f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08

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Rule Caption: Temporarily Re-opening of Lower Umatilla River to Angling for Spring Chinook Salmon.
Adm. Order No.: DFW 56-2008(Temp)
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 5-31-08 thru 6-30-08
Notice Publication Date:
Rules Amended: 635-019-0090
Subject: Amended rule implements a re-opening of the lower Umatilla River to sport angling for excess returning hatchery spring Chinook salmon in an area from the Highway 730 Bridge upstream to Three Mile Dam during a period from 12:01 a.m. Saturday, May 31 through 11:59 p.m. Monday June 30, 2008. Re-opening the lower Umatilla River sport fishery was made possible because sport harvest rates have been very low and harvest allocations remain available from this year's Umatilla River spring Chinook run. This reopening should not affect the upriver sport fishery from Three Mile Dam upstream to the Umatilla Indian Reservation boundary (just upstream of the Highway 11 Bridge at Pendleton). In addition, broodstock and natural production needs are being met through collection periods. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) co-manage this fishery and operational plans for the species.
Rules Coordinator: Colleen Munson—(503) 947-6035

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 lower Umatilla River, from the Highway 730 Bridge upstream to Three Mile Dam, is open to angling for and retention of adipose fin-clipped spring Chinook salmon effective at 12:01 a.m. Saturday, May 31 through 11:59 p.m. Monday, June 30, 2008. The bag limit is: 2 adult fin-clipped spring Chinook salmon and 5 jacks per day; 10 adult fin-clipped Chinook salmon may be kept per year.

[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

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Rule Caption: Ocean Sport Pacific Halibut Closure from Leadbetter Point, Washington to Cape Falcon, Oregon.
Adm. Order No.: DFW 57-2008(Temp)
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 6-1-08 thru 7-31-08
Notice Publication Date:
Rules Amended: 635-039-0085
Subject: Amended rule closes the sport fishery for Pacific halibut in the area between Leadbetter Point, Washington and Cape Falcon, Oregon, at 11:59 p.m. on Sunday, June 1, 2008 when the quota of 13,133 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: Colleen Munson—(503) 947-6035

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, June 1 through Thursday, July 31, 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 corection 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08

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Rule Caption: Close Columbia River Select Area Commercial Fisheries to Retention of Sturgeon.
Adm. Order No.: DFW 58-2008(Temp)
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-4-08 thru 8-31-08
Notice Publication Date:
Rules Amended: 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180
Rules Suspended: 635-042-0145(T), 635-042-0160(T), 635-042-0170(T), 635-042-0180(T)
Subject: Amend rules to prohibit the retention of sturgeon, from 12:00 noon June 4 through 11:59 p.m. July 31, 2008, during the current Columbia River Select Area commercial salmon fisheries. Modification are consistent with action taken June 3, 2008 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Colleen Munson—(503) 947-6035

635-042-0145
Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay except for the period from 12:00 noon June 4, 2008 through 11:59 p.m. July 31, 2008 when sturgeon retention is prohibited. The open fishing periods are established in three segments categorized as the winter fishery, paragraph:

(a) The spring fishery, paragraph

(b) And summer fishery, paragraph

(c) As follows:

(d) Winter Season:

(A) Entire Youngs Bay: Noon Wednesday, February 13 to 6:00 a.m. Thursday, February 14, 2008; Noon Sunday, February 17 to 6:00 a.m. Monday, February 18, 2008; Noon Wednesday, February 20 to 6:00 a.m. Thursday, February 21, 2008; Noon Sunday, February 24 to 6:00 a.m. Monday, February 25, 2008; Noon Wednesday, February 27 to 6:00 a.m. Thursday, February 28, 2008 Noon Sunday, March 2 to 6:00 a.m. Monday, March 3, 2008; Noon Wednesday, March 5 to 6:00 a.m. Thursday, March 6, 2008; Noon Sunday, March 9 to 6:00 a.m. Monday, March 10, 2008; 10:00 a.m. to 2:00 p.m. Wednesday, March 12, 2008.

(B) Upstream of old Youngs Bay Bridge: Noon Sunday, March 16 to 6:00 a.m. Monday, March 17, 2008; 6:00 a.m. to 6:00 p.m. Tuesday, March 18, 2008; 6:00 a.m. to 6:00 p.m. Thursday, March 20, 2008; Noon Sunday, March 23 to 6:00 a.m. Monday, March 24, 2008; 6:00 a.m. to 6:00 p.m. Tuesday, March 25, 2008; 6:00 a.m. to 6:00 p.m. Thursday, March 27, 2008; Noon Sunday, March 30 to 6:00 a.m. Monday, March 31, 2008; 6:00 a.m. to 6:00 p.m. Tuesday, April 1, 2008; 6:00 a.m. to 6:00 p.m. Thursday, April 3, 2008.

(C) Walluski Area: Noon Sunday, April 6 to 6:00 a.m. Monday, April 7, 2008; 6:00 a.m. to 6:00 p.m. Tuesday, April 8, 2008.

(e) Spring Season: Entire Youngs Bay: 6:00 p.m. Thursday, April 17 to 6:00 a.m. Friday, April 18, 2008; 6:00 p.m. Monday, April 21 to 6:00 a.m. Tuesday, April 22, 2008; 6:00 a.m. Thursday, April 24 to 6:00 a.m. Friday, April 25, 2008; 6:00 p.m. Monday, April 28 to Noon Tuesday, April 29, 2008; 6:00 p.m. Thursday, May 1 to Noon Friday, May 2, 2008; Noon Monday, May 5 to Noon Friday, May 9, 2008; 7:00 p.m. Monday, May 19 to Noon Friday, May 23, 2008; Noon Monday, May 26 to Noon Friday, May 30, 2008; Noon Monday, June 2 to Noon Friday, June 6, 2008; Noon Tuesday, June 10 to Noon Friday, June 13, 2008.

(f) Summer Season: Entire Youngs Bay: 6:00 a.m. Wednesday, June 18 to 6:00 a.m. Friday, June 20, 2008; 6:00 a.m. Wednesday, June 25 to 6:00 a.m. Friday, June 27, 2008; 6:00 a.m. Wednesday, July 2 to 6:00 a.m. Friday, July 4, 2008; 6:00 a.m. Wednesday, July 9 to 6:00 a.m. Friday, July 11, 2008; 6:00 a.m. Wednesday, July 16 to 6:00 a.m. Friday, July 18, 2008; 6:00 a.m. Wednesday, July 23 to 6:00 a.m. Friday, July 25, 2008; 6:00 a.m. Wednesday, July 30 to 6:00 p.m. Thursday, July 31, 2008.

(2) The fishing areas for the winter, spring and summer fisheries are:

(a) From February 13, 2008 through March 12, 2008 and from April 17, 2008 through July 31, 2008 the fishing area is identified as the waters of Youngs Bay upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers.

(b) From March 16 through March 27, 2008 the fishing area extends from the Old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers.

(c) From March 30, 2008 through April 8, 2008 the fishing area extends from the first overhead powerlines downstream of the Walluski River upstream to the confluence of the Youngs and Klaskanine rivers.

(3) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 13, 2008 to April 8, 2008. It is unlawful to use a gill net having a mesh size that is greater than 8-inches during the period from April 17 through July 31, 2008.

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 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; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 30-2008(Temp), f. 3-27-08, cert. ef. 3-30-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08

635-042-0160
Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough and Knappa Slough except for the period from 12:00 noon June 4, 2008 through 11:59 p.m. June 13, 2008 when sturgeon retention is prohibited. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in Blind Slough and Knappa Slough in paragraph (B). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only: Wednesday, February 20 to Thursday, February 21, 2008; Sunday, February 24 to Monday, February 25, 2008; Wednesday, February 27 to Thursday, February 28, 2008; Sunday, March 2, to Monday, March 3, 2008; Wednesday, March 5 to Thursday, March 6, 2008; Sunday, March 9, to Monday, March 10, 2008; Wednesday, March 12 to Thursday, March 13, 2008; Sunday, March 16, to Monday, March 17, 2008; Wednesday, March 19 to Thursday, March 20, 2008; Sunday, March 23, to Monday, March 24, 2008; Wednesday, March 26 to Thursday, March 27, 2008; Sunday, March 30, to Monday, March 31, 2008; Sunday, April 6 to Monday, April 7, 2008.

(B) Blind and Knappa Sloughs: Thursday, April 17 to Friday, April 18, 2008; Monday, April 21 to Tuesday, April 22, 2008; Thursday, April 24 to Friday, April 25, 2008; Monday, April 28 to Tuesday, April 29, 2008; Thursday, May 1 to Friday, May 2, 2008; Monday, May 5 to Tuesday, May 6, 2008; Thursday, May 8 to Friday, May 9, 2008; Monday, May 19 to Tuesday, May 20, 2008; Thursday, May 22 to Friday, May 23, 2008; Monday, May 26 to Tuesday, May 27, 2008; Thursday, May 29 to Friday, May 30, 2008; Monday, June 2 to Tuesday, June 3, 2008; Thursday, June 5 to Friday, June 6, 2008; Monday, June 9 to Tuesday, June 10, 2008; Thursday, June 12 to Friday, June 13, 2008.

(b) The fishing areas for the winter and spring seasons are:

(A) Blind Slough are those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) From April 17 through April 29, 2008 Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) From May 1 through June 13, 2008, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(2) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted.

(A) During the winter fishery, outlined above in (1)(a)(A), it is *unlawful* to use a gill net having a mesh size that is less than 7-inches.

(B) During the spring fishery, outlined above in (1)(a)(B), it is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08

635-042-0170
Tongue Point Basin and South Channel

(1) Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point through the green US Coast Guard buoy "7" to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red US Coast Guard marker "10" northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(3) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule except for the period from 12:00 noon June 4, 2008 through 11:59 p.m. June 13, 2008 when sturgeon retention is prohibited. Open fishing periods are: Monday and Thursday nights between 7:00 p.m. and 7:00 a.m. the following morning, from April 28 through May 11, 2008 and May 19 through June 13, 2008.

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as the reduced Tongue Point fishing area, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is unlawful to use a gill net having a mesh size that is more than 8-inches. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(c) While fishing during the seasons described in this rule, it will be legal to have onboard a commercial vessel more than one net provided the nets are of mesh size legal for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. 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.

(5) During April 28 through May 9, transportation or possession of fish outside the fishing areas described in sections (1) and (2) above is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock during the first four fishing periods (April 28-May 9). After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 12, fishers are required to call 503-325-3418 and leave a message including name, catch, and where and when the fish will be sold.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-

01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative Correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 76-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 44-2008(Temp), f. 4-25-08, cert. ef. 4-28-08 thru 10-24-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08

635-042-0180
Deep River Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge except for the period from 12:00 noon June 4, 2008 through 11:59 p.m. June 13, 2008 when sturgeon retention is prohibited.

(2) The fishing seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours):

(a) Winter season: Monday, February 18 to Tuesday, February 19, 2008; Monday, February 25 to Tuesday, February 26, 2008; Monday, March 3 to Tuesday, March 4, 2008; Monday, March 10 to Tuesday, March 11, 2008.

(b) Spring season: Thursday, April 17 to Friday, April 18, 2008; Monday, April 21 to Tuesday, April 22, 2008; Thursday, April 24 to Friday, April 25, 2008; Monday, April 28 to Tuesday, April 29, 2008; Thursday, May 1 to Friday, May 2, 2008; Monday, May 5 to Tuesday, May 6, 2008; Thursday, May 8 to Friday, May 9, 2008; Monday, May 19 to Tuesday, May 20, 2008; Thursday, May 22 to Friday, May 23, 2008; Monday, May 26 to Tuesday, May 27, 2008; Thursday, May 29 to Friday, May 30, 2008; Monday, June 2 to Tuesday, June 3, 2008; Thursday, June 5 to Friday, June 6, 2008; Monday, June 9 to Tuesday, June 10, 2008; Thursday, June 12 to Friday, June 13, 2008.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(a) During the winter season, outlined above in (2)(a), it is unlawful to use a gill net having a mesh size that is less than 7-inches;

(b) During the spring season, outlined above in (2)(b) it is unlawful to use a gill net having a mesh size that is more than 8-inches.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08

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Rule Caption: Number of Derelict Ocean Dungeness Crab Pots Allowed in Possession Increased.

Adm. Order No.: DFW 59-2008(Temp)
Filed with Sec. of State: 6-11-2008
Certified to be Effective: 6-11-08 thru 8-28-08
Notice Publication Date:
Rules Amended: 635-005-0055
Rules Suspended: 635-005-0055(T)
Subject: Amended rule provides expanded opportunity for commercial ocean Dungeness crab permit holders to retrieve derelict crab pots found in the ocean from six (allowed under current rule) to fifty.
Rules Coordinator: Colleen Munson—(503) 947-6035

635-005-0055
Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6 mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(7) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and an ODFW buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of December 14, 2007, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C) If the Director finds that the loss of the crab pot buoy tags was:

(i) Due to an extraordinary event; and

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (7)(g)(E) of this rule, and a request for replacement tags under subsection (9)(d)(C) of this rule, the Director or his designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (9)(d)(C). The Director or his designee shall provide the Director's order to the permit holder and to ODFW License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-006-1065(1)(g).

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(8) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(9) Possess on a vessel, use, control, or operate any crab pot which does not have a pot tag identifying the pot as that vessel's, a surface buoy bearing the ODFW buoy brand registered to that vessel and an ODFW buoy tag issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) During March 26 through May 1, 2008, under a federally sponsored contract for the purpose of developing methods for derelict and lost gear recovery, to retrieve from the ocean, including the Columbia River, crab pots which were lost, forgotten, damaged, abandoned or otherwise derelict and transport them to shore; or

(c) During June through August 28, 2008, to retrieve from the ocean, including the Columbia River, and transport to shore up to fifty crab pots of another vessel which were lost, forgotten, damaged, abandoned or otherwise derelict; provided that:

(A) Upon retrieval from the ocean or Columbia River, the pot(s) must be un-baited; and

(B) Crab from the retrieved pot(s) shall not be retained; and

(C) Immediately upon retrieval of pot(s), the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot retrieval, number of retrieved crab pots, location of retrieval, and retrieved pot owner identification information; and

(D) Any retrieved crab pot(s) must be transported to shore during the same fishing trip that retrieval took place; or

(d) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(e) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing crab pots not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized to participate in the Dungeness crab fishery of an adjacent state.

(10) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(11) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(12) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(13) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(14) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DWF 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07;DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef.12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert .ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08; DFW 29-2008(Temp), f. & cert. ef. 3-25-08 thru 8-31-08; DFW 59-2008(Temp), f. & cert. ef. 6-11-08 thru 8-28-08

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Rule Caption: 2009 annual changes to game hunting regulations, plus 2008 controlled hunt tag numbers.
Adm. Order No.: DFW 60-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 6-12-08
Notice Publication Date: 5-1-2008
Rules Amended: 635-060-0000, 635-067-0000, 635-068-0000, 635-069-0000, 635-070-0000, 635-071-0000, 635-073-0000
Subject: Establish 2008 controlled hunt tag numbers and/or season regulations for the hinting season of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk.
Rules Coordinator: Therese M. Kucera—(503) 947-6033

635-060-0000
Purpose and General Information

(1) The purpose of these rules is to describe the requirements and procedures for controlled hunts pursuant to ORS 496.162.

(2) The documents entitled "2007–2008 Oregon Game Bird Regulations" and "2008 Oregon Big Game Regulations," are incorporated by reference into these rules. These documents are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 118, f. & ef. 6-3-77; FWC 25-1978, f. & ef. 5-26-78; FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 16-1985, f. & ef. 4-11-85; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 40-1987, f. & ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 28-2002(Temp), f. 4-1-02, cert. ef. 4-2-02 thru 9-28-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 91-2005, f. & cert. ef. 8-19-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 60-2008, f. & cert. 6-12-08

635-067-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2008 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2008 Oregon Big Game Regulations" in addition to chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents

and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in chapter 635, division 065. Controlled hunt tag numbers for "2008" are listed in Tables 1, 2, and 3 and are adopted and incorporated into chapter 635, division 067 by reference.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 60-2008, f. & cert. 6-12-08

635-068-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for "2008" are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2008 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2008 Oregon Big Game Regulations" in addition to chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001. f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. 12-4-03, cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. 12-21-04, cert. ef. 3-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 131-2005, f. 12-1-05, cert. ef. 3-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 125-2006, f. 12-4-06, cert. ef. 3-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 116-2007, f. 10-31-07, cert. ef. 3-1-08; DFW 60-2008, f. & cert. 6-12-08

635-069-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for "2008" are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2008 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2008 Oregon Big Game Regulations" in addition to chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. 6-12-08

635-070-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for "2008" are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2008 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2008 Oregon Big Game Regulations" in addition to chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef 10-18-04 thru 11-27-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. 6-12-08

635-071-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for "2008" are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "2008 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2008 Oregon Big Game Regulations" in addition to chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. 6-12-08

635-073-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for "2008" for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1

and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2008 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2008 Oregon Big Game Regulations," in addition to chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

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

Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. 6-12-08

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Rule Caption: Summer Recreational Steelhead Fisheries in the Columbia River.
Adm. Order No.: DFW 61-2008(Temp)
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 6-16-08 thru 7-31-08
Notice Publication Date:
Rules Amended: 635-023-0128
Subject: This amended rule provides a recreational summer steelhead fishery in the Columbia River below the I-5 Bridge. Modifications are consistent with action taken June 12, 2008 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese M. 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;

(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; and

(d) 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.

(e) The daily bag limit for adult salmon and adipose fin-clipped steelhead combined is two fish; 5 jack salmon per day, 2 daily 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

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Rule Caption: Allowable sales of fish caught during Tribal Treaty fisheries in the Columbia River and tributaries.
Adm. Order No.: DFW 62-2008(Temp)
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 6-16-08 thru 8-31-08
Notice Publication Date:
Rules Amended: 635-041-0076
Rules Suspended: 635-041-0076(T)
Subject: This rule allows commercial sales of fish caught in Tribal Treaty fisheries in the Columbia River and tributaries. Modification are consistent with action taken June 12, 2008 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese M. 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, 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, steelhead, walleye, carp, and shad. Sockeye may not be sold but may be retained for subsistence.

(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

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Rule Caption: Summer Salmon Gill Net Seasons In Mainstem Columbia River Fisheries.
Adm. Order No.: DFW 63-2008(Temp)
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 6-24-08 thru 7-31-08
Notice Publication Date:

Rules Amended: 635-042-0027
Subject: This rule will provide a summer salmon gill net fishery in the Columbia River mainstem consistent with provisions of the US v Oregon management agreement. Implementation is consistent with action taken June 12, 2008 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese M. Kucera—(503) 947-6033

635-042-0027
Summer Salmon Season

(1) Chinook salmon, coho 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, white sturgeon and shad. All sockeye and 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

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

Rule Caption: Amendment of OAR 309-035 allowing the Division to operate "State Delivered Secured Residential Treatment Facilities."
Adm. Order No.: MHS 4-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 6-12-08
Notice Publication Date: 4-1-2008
Rules Amended: 309-035-0100, 309-035-0105, 309-035-0110, 309-035-0113, 309-035-0117, 309-035-0120, 309-035-0125, 309-035-0145, 309-035-0150, 309-035-0157, 309-035-0165, 309-035-0167, 309-035-0170, 309-035-0185, 309-035-0190
Subject: The Department of Human Services, Addictions & Mental Health Division, is amending rules in OAR 309-035 "Residential Care Facilities for Mentally or Emotionally Disturbed Persons" rules to provide that the Division can operate "State Delivered Secure Residential Treatment Facilities."
Rules Coordinator: Richard Luthe—(503) 947-1186

309-035-0100
Purpose and Scope

(1) Purpose. These rules prescribe standards by which the Addictions and Mental Health Division (AMH) approves residential treatment facilities for adults with mental or emotional disorders. The standards promote the well-being, health and recovery of adults with mental or emotional disorders through the availability of a wide range of residential service options. They prescribe how services will be provided in safe, secure and homelike environments that recognize the dignity, individuality and right to self-determination of each resident.

(2) Scope. These rules apply to residential treatment facilities for six to 15 residents and to residential treatment facilities serving 16 or more residents. Where standards differ based on the number of residents in a facility, the rules prescribe different requirements.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0105
Definitions

As used in these rules the following definitions apply:

(1) "Abuse" includes but is not limited to:

(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, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(g) Abuse also includes:

(A) Failure to act and/or neglect that results in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to failure by a provider or staff to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through tolerating or permitting abusive conduct toward an adult by any other person. However, no person will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an adult to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation and threatening injury or withholding of services or supports, including implied or direct threat of termination of services;

(C) Placement of restrictions on a resident's freedom of movement. Restriction to an area of the residence or restricting access to ordinarily accessible areas of the residence is not allowed, unless arranged for and agreed to on the Personal Care Plan (PCP);

(D) Financial exploitation by a caregiver including, but not limited to, unauthorized rate increases, borrowing from or loaning money to residents, witnessing wills in which a caregiver is beneficiary, adding caregiver's name to resident's bank accounts or other personal property without approval of the resident or his/her guardian or conservator and the PCP team; and

(E) Inappropriate expenditure of a resident's personal funds, theft of a resident's personal funds, use of a resident's personal funds for caregivers own benefit, commingling of a resident's funds with caregiver or other resident's funds, or a caregiver becoming guardian or conservator.

(2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the facility.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional (LMP) or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity, including the Addictions and Mental Health (AMH) Division, who owns or maintains and operates the facility and is applying for the license.

(6) "Approved" means authorized or allowed by the Division.

(7) "Assistant Director" means the Assistant Director of the Addictions and Mental Health (AMH) Division of the Department of Human Services (DHS).

(8) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(9) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(10) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for persons with mental or emotional disorders, and developmental disabilities operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(11) "Contract" means a formal written agreement between the community mental health program, Oregon Health Plan contractor or the Division and a Residential Treatment Facility (RTF) owner.

(12) "Crisis-Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTF residents.

(13) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)," published by the American Psychiatric Association.

(14) "Deputy Assistant Director" means the Deputy Assistant Director of the Addictions and Mental Health (AMH) Division of the Division of Human Services (DHS).

(15) "Division" means the Addictions and Mental Health (AMH) of the Oregon Department of Human Services (DHS).

(16) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(17) "Emergency Admission" means an admission to an RTF made on an urgent basis due to the pressing service needs of the individual.

(18) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:

(a) Impractical (SR-2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR-1): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes.

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. Division is authorized to determine evacuation capability for RTFs in accordance with the NFPA 101A 2000 edition. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(19) "Facility" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a Residential Treatment Facility.

(20) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.

(21) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licensures:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse Practitioner licensed to practice in the State of Oregon; or

(C) Physician's Assistant licensed to practice in the State of Oregon; and

(b) Whose training, experience and competence demonstrates the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(22) "Licensee" means the person(s) or entity legally responsible for the operation of the facility to which the Division has issued a license.

(23) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with the Division to operate a CMHP or MHO for that county.

(24) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(25) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder, that limits an individual's ability to perform activities of daily living.

(26) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(27) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs can be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(28) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(29) "Owner" means the person(s) or entity, including the Division, that is legally responsible for the operation of the facility.

(30) "P.r.n. (pro re nata) Medications and Treatments" means those medications and treatments which have been ordered to be given as needed.

(31) "Program" means the Residential Treatment Facility and may refer to the owner, staff and/or services as applicable to the context.

(32) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.

(33) "Protection" means the necessary actions taken by the program to prevent abuse or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property and funds.

(34) "Resident" means any adult residing in a facility who receives services on a 24-hour basis, except as excluded under ORS 443.400(3).

(35) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the facility based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the RTF is operated by a mental health service agency that provides other services to the resident.

(36) "Residential Treatment Facility (RTF)" means a facility that is operated to provide services on a 24-hour basis for six or more residents.

(37) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(38) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(39) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures. Such locking devices will be installed in accordance with Building Code requirements.

(40) "Services" means the care and treatment provided to residents as part of the Residential Treatment Facility plan.

(41) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.

(42) "Termination of Residency" means the time at which the resident ceases to live in the RTF, and includes the transfer of the resident to another facility, but does not include absences from the facility for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(43) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 6-2007(Temp), f. & cert. ef. 5-25-07 thru 11-21-07; MHS 13-2007, f. & cert. ef. 8-31-07; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0110
Licensing

(1) License Required. The Division will license any facility that meets the definition of a Residential Treatment Facility and serves adults with a mental or emotional disorder. In the case of a facility serving another category of residents in addition to adults with a mental or emotional disorder, the Department responsible for licensure will be determined by the Assistant Director. No person or governmental unit acting individually or jointly with any other person or governmental unit will establish, maintain, manage, or operate a Residential Treatment Facility without a license issued by the Division.

(2) Initial Application. An application for a license will be accompanied by the required fee and submitted to the Division using the forms or format required by the Division. The following information will be required in the application:

(a) Full and complete information as to the identity and financial interest of each person, including stockholders, having a direct or indirect ownership interest of five percent or more in the facility and all officers and directors in the case of facilities operated or owned by a corporation.

(b) Name and resume of the administrator of the facility;

(c) Location (street address) of the facility and mailing address;

(d) Maximum number of residents to be served at any one time, their age range and evacuation capability;

(e) Proposed annual budget identifying sources of revenue and expenses;

(f) Signed criminal record authorizations for all persons involved in the operation of the RTF who will have contact with the residents;

(g) A complete set of policies and procedures;

(h) Facility plans and specifications; and

(i) Such other information as the Division may reasonably require.

(3) Plans and Design Approval. A complete set of plans and specifications will be submitted to the Division at the time of initial application, whenever a new structure or addition to an existing structure is proposed, or when significant alterations to an existing facility are proposed. Plans will meet the following criteria:

(a) Plans will be prepared in accordance with the Building Code and requirements of OAR 309-035-0125;

(b) Plans will be to scale and sufficiently complete to allow full review for compliance with these rules; and

(c) Plans will bear the stamp of an Oregon licensed architect or engineer when required by the Building Code.

(4) Necessary Approvals. Prior to approval of a license for a new or renovated facility, the applicant will submit the following to the Division:

(a) One copy of written approval to occupy the facility issued by the city or county building codes authority having jurisdiction;

(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the facility complies with the Fire Code;

(c) When the facility is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has approved the water supply in accordance with OAR chapter 333, Health Services rules to public water systems.

(d) When the facility is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.

(5) Required Fees. The fee for each Residential Treatment Facility license application is $60. No fee is required in the case of a governmentally operated Residential Treatment Facility.

(6) Renewal Application. A license is renewable upon submission of a renewal application in the form or format required by the Division and a non-refundable fee of $60, except that no fee will be required of a governmentally operated facility.

(a) Filing of an application for renewal before the date of expiration extends the effective date of the current license until the Division takes action upon the renewal application.

(b) The Division will refuse to renew a license if the facility is not in substantial compliance with these rules, or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(7) Review Process. Upon receipt of an application and fee, the Division will conduct an application review. Initial action by the Division on the application will begin within 30 days of receipt of all application materials. The review will:

(a) Include a complete review of application materials;

(b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:

(A) Demonstrates an understanding and acceptance of these rules;

(B) Is mentally and physically capable of providing services for residents;

(C) Employs or utilizes only individuals whose presence does not jeopardize the health, safety, or welfare of residents; and

(D) Provides evidence satisfactory to the Division of financial ability to comply with these rules.

(c) Include a site inspection; and

(d) Conclude with a report stating findings and a decision on licensing of the facility.

(8) Findings of Noncompliance. The Division will require an owner to submit and complete a plan of correction for each finding of noncompliance with these rules.

(a) If the finding(s) of noncompliance substantially impact the welfare, health and/or safety of residents, the plan of correction will be submitted and completed prior to issuance of a license. In the case of a currently operating RTF, such findings may result in suspension or revocation of a license.

(b) If it is determined that the finding(s) of noncompliance do not threaten the welfare, health or safety of residents and the facility meets other requirements of licensing, a license may be issued or renewed, and the plan of correction will be submitted and completed as a condition of licensing.

(c) The Division will specify required documentation and set the time lines for the submission and completion of plans of correction in accordance with the severity of the finding(s).

(d) The Division will review and approve each plan of correction. If the plan of correction does not adequately remedy the finding of noncompliance, the Division will require a revised plan of correction, and/or take action to apply civil penalties or deny, revoke or suspend the license.

(e) The RTF owner may appeal the finding of noncompliance or the disapproval of a plan of correction by submitting a request for reconsideration in writing to the Administrator of the Division. The Administrator of the Division or designee will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Administrator of the Division will be final.

(9) Variance. The Division may grant a variance to these rules based upon a demonstration by the applicant that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health or safety of residents.

(a) Variance Application. The RTF owner requesting a variance will submit, in writing, an application to the Division which identifies the section of the rules from which the variance is sought, the reason for the proposed variance, the proposed alternative method or different approach, and signed documentation from the CMHP indicating approval of the proposed variance.

(b) Division Review. The Deputy Assistant Director or designee, will review and approve or deny the request for a variance.

(c) Notification of Decision. The Division will notify the RTF owner of the decision in writing within 30 days after receipt of the application. A variance may be implemented only after receipt of written approval from the Division.

(d) Appeal of Decision. The RTF owner may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Assistant Director of the Division. The Assistant Director of the Division will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Assistant Director of the Division will be final.

(e) Duration of the Variance. A variance will be reviewed by the Division at least every two years and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health or safety of the RTF residents.

(10) Issuance of License. Upon finding that the applicant is in substantial compliance with these rules, the Division will issue a license.

(a) The license issued will state the name of the owner of the facility, the name of the administrator, the address of the facility to which the

license applies, the maximum number of residents to be served at any one time and their evacuation capability, the type of facility, and such other information as the Division deems necessary.

(b) A Residential Treatment Facility license will be effective for two years from the date issued unless sooner revoked or suspended.

(c) The Residential Treatment Facility license is not transferable or applicable to any location, facility, or management other than that indicated on the application and license.

(11) Conditions of License. The license will be valid under the following conditions:

(a) The Residential Treatment Facility will not be operated or maintained in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part. Each Residential Treatment Facility will have sleeping, dining and living areas for use only by its own residents, employees and invited guests.

(b) The license will be retained in the facility and available for inspection at all times.

(c) Each license will be considered void immediately upon suspension or revocation of the license by the Division, or if the operation is discontinued by voluntary action of the licensee, or if there is a change of ownership.

(12) Site Inspections. Division staff will visit and inspect every Residential Treatment Facility at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules. The RTF owner/applicant will allow Division staff entry and access to the facility and residents for the purpose of conducting the inspections.

(a) Division staff will review methods of resident care and treatment, records, the condition of the facility and equipment, and other areas of operation.

(b) All records, unless specifically excluded by law, will be available to the Division for review.

(c) The State Fire Marshal or authorized representative(s) will, upon request, be permitted access to the facility, fire safety equipment within the facility, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of facility occupants.

(13) Investigation of Complaints and Alleged Abuse. Incidents of alleged abuse covered by ORS 430.735 through 430.765 will be reported and investigated in accordance with OAR 410-009-0050 through 410-009-0160. Division staff will investigate complaints and other alleged abuse made regarding residential treatment facilities, will cause a report to be filed, and will take appropriate action under these rules. The Division may delegate the investigation to a CMHP or other appropriate entity.

(14) Denial, Suspension or Revocation of License. The Division will deny, suspend or revoke a license where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or authorized representative certifies that there is failure to comply with the Fire Code.

(a) In cases where there exists an imminent danger to the health or safety of residents, a license may be suspended immediately.

(b) Such revocation, suspension, or denial will be done in accordance with OAR 309-035-0157.

(15) Reporting Changes. Each licensee will report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. Such changes include, but are not limited to, changes in the facility name, owner entity, administrator, telephone number and mailing address. Such changes also include, but are not limited to, changes in the facility's physical plant, policies and procedures or staffing pattern when such changes are significant or impact the health, safety or well-being of residents.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0113
Contracts and Rates

(1) Contracts. Residential Treatment Facility operators providing services funded with state service payments will enter into a contract with the local CMHP, the Division or other Division-approved party. The contract does not guarantee that any number of persons eligible for Division funded services will be referred to or maintained in the facility.

(2) Rates. Rates for all services and the procedures for collecting payments from residents and/or payees will be specified in a fee policy and procedures. The fee policy and procedures will describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of termination of residency.

(a) For residents whose services are funded by the Division, reimbursement for services will be made according to the rate schedule outlined in the contract. Room and board payments for residents receiving Social Security benefits or public assistance will be in accordance with rates determined by the Division.

(b) For private paying residents, the program will enter into a signed agreement with the resident, and/or if applicable, resident's guardian, payee or conservator. This agreement will include but not be limited to a description of the services to be provided; the schedule of rates; conditions under which the rates may be changed; and policy on refunds at the time of termination of residency.

(c) Before increasing rates or modifying payment procedures, the program will provide 30 days advance notice of the change to all residents, payees, guardians or conservators, as applicable.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0117
Records

(1) General Requirements. Records will be maintained to document the legal operation of the program, personnel practices and resident services. All records will be properly obtained, accurately prepared, safely stored and readily available within the facility. All entries in records required by these rules will be in ink, indelible pencil, or approved electronic equivalent prepared at the time, or immediately following, the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

(2) Program Records. Records documenting the legal operation of the RTF will include, but not be limited to:

(a) Written approval for occupancy of the building by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports or other documentation pertaining to the safe and sanitary operation of the facility issued during the development or operation of the facility;

(b) Application for license, related correspondence and site inspection reports;

(c) Program operating budget and related financial records;

(d) Payroll records, employee schedules and time sheets;

(e) Materials Safety and Data Sheets;

(f) Fire drill documentation;

(g) Fire alarm and sprinkler system maintenance and testing records;

(h) Incident reports; and

(i) Policy and procedure manual.

(3) Personnel Records. Records documenting personnel actions will include:

(a) Job descriptions for all positions; and

(b) Individual employee records including, but not limited to, written documentation of employee identifying information and qualifications, criminal record clearance, T.B. test results, Hepatitis B status, performance appraisals, and documentation of pre-service orientation and other training.

(4) Resident Records. An individual resident record will be maintained for each resident and include:

(a) An easily accessible summary sheet which includes, but is not limited to the resident's name, previous address, date of admission to the facility, sex, date of birth, marital status, legal status, religious preference, Social Security number, health provider information, evacuation capability, diagnosis(es), major health concerns, medication allergies, information indicating whether advance mental health and health directives and/or burial plan have been executed, and the name of person(s) to contact in case of emergency;

(b) The names, addresses and telephone numbers of the resident's legal guardian or conservator, parent(s), next of kin, or other significant person(s); physician(s) or other medical practitioner(s); dentist; CMHP case manager or therapist; day program, school or employer; and any governmental or other agency representative(s) providing services to the resident;

(c) A mental health assessment and background information identifying the resident's residential service needs;

(d) Advance mental health and health directives, burial plans or location of these (as available);

(e) A Residential Service Plan and copy(ies) of plan(s) from other service provider(s).

(f) Documentation of the resident's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the resident; and

(g) Health-related information and up-to-date information on medications in accordance with OAR 309-035-0175.

(5) Records for Crisis-respite Residents. For residents receiving crisis-respite services, an attempt will be made to obtain and maintain records as outlined in OAR 309-035-0117(4). Because it may not be possible to assemble complete records during the crisis-respite resident's short stay, the program will, at a minimum, maintain records in accordance with requirements outlined in OAR 309-035-0145, 309-035-0150, 309-035-0159, and 309-035-0175.

(6) Storage. All resident records will be stored in a weatherproof and secure location. Access to records will be limited to the Administrator and direct care staff unless otherwise allowed in these rules.

(7) Confidentiality. All resident records will be kept confidential. A signed release of information will be obtained for any disclosure from resident records in accordance with all applicable laws and rules.

(8) Resident Access to His/Her Record. A resident, or guardian (as applicable), will be allowed to review and obtain a copy of his/her resident record as allowed in ORS 179.505(9).

(9) Transfer of Records. Pertinent information from records of residents who are being transferred to another facility will be transferred with the resident. A signed release of information will be obtained in accordance with applicable laws and rules.

(10) Maintenance of Records. The facility will keep all records, except those transferred with a resident, for a period of three years.

(11) Administrative Changes. If an RTF changes ownership or Administrator, all resident and personnel records will remain in the facility. Prior to the dissolution of any RTF, the Administrator will notify the Division in writing as to the location and storage of resident records or those records will be transferred with the residents.

(12) Resident Contributions to Record. If a resident or guardian (as applicable) disagrees with the content of the resident record, or otherwise desires to provide documentation for the record, the resident or guardian (as applicable) may provide material in writing that then will become part of the resident record.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0120
Staffing

(1) Staff Qualifications. A job description will be available for each staff position and specify qualifications and job duties.

(a) Any staff person hired to provide direct care to residents will be at least 18 years of age, be capable of implementing the facility's emergency procedures and disaster plan, and be capable of performing other duties of the job as described in the job description.

(b) All staff who will have contact with residents will provide evidence of a criminal record clearance, in accordance with OAR 407-007-0200 through 407-007-0380.

(c) In accordance with OAR 333-071-0057 and 437, Division 2, Subdivision Z, 4f (1)(2), all RTF staff who have contact with residents will be tested for tuberculosis and Hepatitis B within two weeks of first employment, additional testing will take place as deemed necessary; and the employment of staff who test positive for tuberculosis will be restricted if necessary.

(d) All staff will meet other qualifications when required by a contract or financing arrangement approved by the Division.

(2) Personnel Policies. Personnel policies will be made available to all staff and will describe hiring, leave, promotion and disciplinary practices.

(3) Staff Training. The administrator will provide or arrange a minimum of 16 hours pre-service orientation and 8 hours in-service training annually for each employee.

(a) Pre-service training for direct care staff will include, but not be limited to, a comprehensive tour of the facility; a review of emergency procedures developed in accordance with OAR 309-035-0130; a review of facility house rules, policies and procedures; background on mental and emotional disorders; an overview of resident rights; medication management procedures; food service arrangements; a summary of each resident's assessment and residential service plan; and other information relevant to the job description and scheduled shift(s).

(b) In-service training will be provided on topics relevant to improving the care and treatment of residents in the facility and meeting the requirements in these administrative rules. In-service training topics include, but are not limited to, implementing the residential service plan, behavior management, daily living skills development, nutrition, first aid, understanding mental illness, sanitary food handling, resident rights, identifying health care needs, and psychotropic medications.

(4) General Staffing Requirements. The licensee and administrator are responsible for assuring that an adequate number of staff are available at all times to meet the treatment, health and safety needs of residents. Regardless of the minimum staffing requirements outlined below, staff will be scheduled to insure safety and to correspond to the changing needs of residents. Minimum staffing requirements are as follows:

(a) In facilities serving 6 to 20 residents, there will be at least one direct care staff person on duty at all times.

(b) In facilities serving 21 to 35 residents, there will be at least two direct care staff on duty from 7:00 a.m. to 9:00 p.m. and at least one direct care staff person on duty from 9:00 p.m. to 7:00 a.m.

(c) In facilities serving 36 to 50 residents, there will be at least three direct care staff on duty from 7:00 a.m. to 9:00 p.m. and at least two direct care staff on duty from 9:00 p.m. to 7:00 a.m.

(d) In facilities serving 51 to 65 residents, there will be at least four direct care staff on duty from 7:00 a.m. to 9:00 p.m. and at least two direct care staff on duty from 9:00 p.m. to 7:00 a.m.

(e) In the case of a specialized RTF, staffing requirements outlined in the contractual agreement for specialized services will be implemented.

(f) Direct care staff on night duty will be awake and dressed at all times. In facilities where residents are housed in two or more detached buildings, direct care staff will monitor each building at least once an hour during the night shift. An approved method for alerting staff to problems will be in place. This method must be accessible to and usable by the residents.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0125
Facility Requirements

(1) Compliance with Building and Fire Codes. Each Residential Treatment Facility will meet the requirements for approved Group SR or I occupancies in the Building Code and the Fire Code in effect at the time of original licensure. When a change in facility use results in a new building occupancy classification, the facility will meet the requirements for approved Group SR or I occupancies in the Building Code in effect at the time of such change. If occupants are capable of evacuation within 3 minutes refer to Group R occupancies.

(2) Accessibility for Persons with Disabilities. Facilities will be accessible as follows:

(a) Those facilities, or portions of facilities, that are licensed, constructed or renovated after January 26, 1992, and that are covered multifamily dwellings or public accommodations, will meet the physical accessibility requirements in Chapter 11 of the Oregon Structural Specialty Codes. These codes specify requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act, as amended in 1988.

(b) In order to insure program accessibility under Title II of the Americans with Disabilities Act, the Division may require additional accessibility improvements.

(c) Any accessibility improvements made to accommodate an identified resident will be in accordance with the specific needs of the resident.

(3) Outdoor Areas. An accessible outdoor area is required and will be made available to all residents. For facilities, or portions thereof, licensed on or after June 1, 1998, a portion of the accessible outdoor area will be covered and have an all weather surface, such as a patio or deck.

(4) General Storage. The facility will include sufficient and safe storage areas. These will include but not be limited to:

(a) Storage for a reasonable amount of resident belongings beyond that available in resident sleeping rooms will be provided appropriate to the size of the facility;

(b) All maintenance equipment, including yard maintenance tools, will be maintained in adequate storage space. Equipment and tools which pose a danger to facility residents will be kept in locked storage;

(c) Storage areas necessary to insure a functional, safe and sanitary environment consistent with OAR 309-035-0125, 309-035-0130, 309-035-0135, 309-035-0140, 309-035-0170, and 309-035-0175.

(5) Hallways. For facilities initially licensed on or after June 1, 1998, all resident use areas and resident units will be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches except that a minimum width of 48 inches will be provided along the route to accessible bedrooms and bathrooms and between common areas and required exits.

(6) Administrative Areas. Sufficient space will be provided for confidential storage of both resident and business records, for staff use in completing record-keeping tasks, and for a telephone. Other equipment including fire alarm panels and other annunciators will be installed in an area readily accessible to staff in accordance with the Fire Code.

(7) Resident Sleeping Rooms. Resident sleeping quarters will be provided in rooms separated from other areas of the facility by an operable door with an approved latching device.

(a) For facilities licensed prior to June 1, 1998, resident sleeping rooms will include a minimum of 60 square feet per resident and allow for a minimum of three feet between beds.

(b) For facilities, or portions thereof, initially licensed on or after June 1, 1998, each resident sleeping room will be limited to one or two residents. At least ten percent, but no less than one, of the resident sleeping rooms will be accessible for persons with mobility disabilities. All resident sleeping rooms will include a minimum of 70 square feet per resident exclusive of closets, vestibules and bathroom facilities and allow a minimum of three feet between beds.

(c) A clothes closet, with adequate clothes hanging rods will be accessible within each sleeping room for storage of each resident's clothing and personal belongings. For facilities initially licensed on or after June 1, 1998, built-in closet space will be provided totaling a minimum of 64 cubic feet for each resident. In accessible sleeping rooms, the clothes hanging rod height will be adjustable or no more than 54 inches in height to insure accessibility for persons in wheelchairs.

(d) Each resident sleeping room will have exterior window(s) with a combined area at least one-tenth of the floor area of the room. Sleeping room windows will be equipped with curtains or blinds for privacy and control of light. For facilities, or portions of facilities, initially licensed on or after June 1, 1998, an escape window will be provided consistent with Building Code requirements.

(8) Bathrooms. Bathing and toilet facilities will be conveniently located for resident use, provide permanently wired light fixtures that illuminate all parts of the room, provide individual privacy for residents, provide a securely affixed mirror at eye level, be adequately ventilated, and include sufficient facilities specially equipped for use by persons with a physical disability in buildings serving such persons.

(a) In facilities licensed prior to June 1, 1998, a minimum of one toilet and one lavatory will be available for each eight residents, and one bathtub or shower will be available for each ten residents.

(b) In facilities, or portions of facilities, initially licensed on or after June 1, 1998, a minimum of one toilet and one lavatory will be available for each six residents, and a minimum of one bathtub or shower will be available for each ten residents, where these fixtures are not available in individual resident rooms. At least one centralized bathroom along an accessible route will be designed for disabled access in accordance with Chapter 11 of the Oregon Structural Specialty Code. For facilities licensed for more than 16 residents, there will be at least one separate toilet and lavatory provided for staff and visitor use.

(9) Common Use Rooms. The facility will include lounge and activity area(s) for social and recreational use, exclusively by residents, staff and invited guests, totaling 15 square feet per resident.

(10) Laundry and Related Space. Laundry facilities will be separate from food preparation and other resident use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both resident and staff use. In facilities initially licensed on or after June 1, 1998, separate residential laundry facilities will be provided when the primary laundry facilities are located in another building, are of commercial type, or are otherwise not suitable for resident use. The following will be included in the primary laundry facilities:

(a) Countertops or spaces for folding table(s) sufficient to handle laundry needs for the facility;

(b) Locked storage for chemicals and equipment;

(c) Outlets, venting and water hook-ups according to state building code requirements. Washers will have a minimum rinse temperature of 155 degrees Fahrenheit (160 degrees Fahrenheit recommended) unless a chemical disinfectant will be used; and

(d) Sufficient storage and handling space to insure that clean laundry is not contaminated by soiled laundry.

(11) Kitchen. Kitchen facilities and equipment in facilities licensed for 16 or fewer residents may be of residential type except as required by the state building code and Fire Code or local agencies having jurisdiction. Facilities serving 17 or more residents will have facilities and equipment meeting Food Sanitation Rules of Health Services under OAR chapter 333 as applicable. For all kitchens, the following will be included:

(a) Dry storage space, not subject to freezing, in cabinets or a separate pantry for a minimum of one week's supply of staple foods;

(b) Sufficient refrigeration space maintained at 45 degrees Fahrenheit or less and freezer space for a minimum of two days' supply of perishable foods;

(c) In facilities licensed to serve 16 or fewer residents, a dishwasher will be provided (may be approved residential type) with a minimum final rinse temperature of 155 degrees Fahrenheit (160 degrees recommended), unless chemical disinfectant is used. In facilities licensed to serve 17 or more residents, a commercial dishwasher is required as specified in Health Services Food Sanitation Rules;

(d) In facilities licensed to serve 16 or fewer residents, a separate food preparation sink and hand washing sink will be provided. In facilities licensed to serve 17 or more residents, a triple pot wash sink will be provided unless pots are sanitized in the dishwasher, in addition to a food preparation sink and separate hand washing sink;

(e) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(f) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(g) Stove and oven equipment for cooking and baking needs; and

(h) Storage for a mop and other cleaning tools and supplies used for food preparation, dining and adjacent areas. Such cleaning tools will be maintained separately from those used to clean other parts of the facility. In facilities initially licensed on or after June 1, 1998, and licensed to serve 17 or more residents, a separate janitor closet or alcove will be provided with a floor or service sink and storage for cleaning tools and supplies.

(12) Dining Area. A separate dining room or area where meals are served will be provided for the exclusive use of residents, employees, and invited guests.

(a) In facilities licensed prior to June 1, 1998, the dining area will seat at least half of the residents at one time with a minimum area of 15 square feet per resident.

(b) In facilities, or portions of facilities, initially licensed on or after June 1, 1998, dining space will be provided to seat all residents with a minimum area of 15 square feet per resident, exclusive of serving facilities and required exit pathways.

(13) Details and Finishes. All details and finishes will meet the finish requirements of applicable sections of the Building Code and the Fire Code.

(a) Surfaces. Surfaces of all walls, ceilings, windows and equipment will be readily cleanable. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, the walls and ceilings in the kitchen, laundry and bathing areas will be smooth, nonabsorbent, and readily cleanable, and kitchen walls in facilities licensed to serve 17 or more residents will comply with Health Services Food Sanitation Rules, OAR chapter 333, division 150 through 160.

(b) Flooring. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, flooring, thresholds and floor junctures will be designed and installed to prevent a tripping hazard and to minimize resistance for passage of wheelchairs and other ambulation aids. In addition, hard surface floors and base will be free from cracks and breaks, and bathing areas will have non-slip surfaces.

(c) Doors. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, all doors to resident sleeping rooms, bathrooms and common use areas will provide a minimum clear opening of 32 inches. Lever type door hardware will be provided on all doors used by residents. If locks are used on doors to resident sleeping rooms, they will be interactive to release with operation of the inside door handle and be master-keyed from the corridor side. Exit doors will not include locks which prevent evacuation except in accordance with Building Code and Fire Code requirements and with written approval of the Division. An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when resident(s) or others enter or exit the facility.

(d) Handrails. Handrails will be provided on all stairways as specified in the Building Code.

(14) Heating and Ventilating. All areas of the facility will be adequately ventilated and temperature controlled in accordance with the Mechanical and Building Code requirements.

(a) Temperature Control. All facilities will include heating equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit at a point three inches above the floor. During times of extreme summer heat, fans will be made available when air conditioning is not provided.

(b) Exhaust Systems. All toilet and shower rooms will be adequately ventilated. In facilities initially licensed on or after June 1, 1998, toilet and shower rooms will be equipped with a mechanical exhaust fan or central exhaust system which discharges to the outside.

(c) Fireplaces, Furnaces, Wood Stoves and Boilers. Where used, design and installation will meet standards of the Oregon Mechanical Specialty Code and the Boiler Specialty Code, as applicable.

(d) Water Temperature. In resident areas, hot water temperatures will be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures in laundry and kitchen areas will be at least 155 degrees Fahrenheit.

(15) Electrical. All wiring systems will meet the standards of Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices will be properly wired and in good repair.

(a) When not fully grounded, circuits in resident areas will be protected by GFCI type receptacles or circuit breakers as an acceptable alternative.

(b) All electrical circuits will be protected by circuit breakers or non-interchangeable plug-type fuses in fuse boxes. Electrical loads on distribution panels and circuits will be limited in accordance with the Oregon Electrical Specialty Code.

(c) A sufficient supply of electrical outlets will be provided to meet resident and staff needs. (The use of extension cords will be in accordance with the rules of the Office of State Fire Marshal and the Department of Health Services.)

(d) Lighting fixtures will be provided in each resident bedroom and bathroom, switchable near the entry door, and in other areas as required to meet task illumination.

(e) In facilities, or portions of facilities, initially licensed on or after June 1, 1998, lighting fixtures that illuminate evacuation pathways will be operable within 10 seconds during a failure of the normal power supply and provide illumination for a period of at least two hours.

(16) Plumbing. All plumbing will meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures will be properly installed and in good repair.

(17) Telephones. The facility will provide adequate access to telephones for private use by residents. In facilities initially licensed on or after June 1, 1998, a phone for resident use will be provided in addition to the phone used by staff. The facility may establish reasonable house rules governing phone use to insure equal access by all residents. Each resident or guardian (as applicable) will be responsible for payment of long distance phone bills where the calls were initiated by the resident, unless other mutually agreed arrangements have been made.

(18) Smoking. Smoking is not allowed in sleeping areas. If there is a designated smoking area, it will be separated from other common areas. Indoor smoking areas will be equipped with a mechanical exhaust fan or central exhaust system which discharges to the outside. Furniture used in designated smoking areas will be non-flammable and without crevasses. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, indoor smoking areas will be separated from other parts of the facility by a self-closing door and contain sprinkler protection or heat detectors.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef.; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0145
Admission to Facility

(1) Responsibility for Admission Process. Each facility's admission policy and procedures will specify who is responsible for each component of the admission information-gathering and decision-making process. Responsibilities will be organized and assigned to promote effective processing of referrals and admissions.

(2) Referrals. Unless limited by contractual agreement with the Division or other Division-approved party, referrals may be accepted from a variety of sources. Residents whose services will be funded by the Division must be approved for placement by the CMHP or other local entity given responsibility for this function by contract with the Division, and/or approval of the Division.

(3) Release of Information. In accordance with ORS 179.505 and the 42 CFR, Part 2, an authorization for the release of information will be obtained for any confidential information concerning a prospective resident.

(4) Nondiscrimination. Persons will be considered for admission without regard to race, color, sex or sexual orientation (except as may be limited by room arrangement), religion, creed, national origin, age (except under 18 years), familial status, marital status, source of income, or disability in addition to the mental or emotional disorder.

(5) Screening. Prior to accepting a resident for admission to the facility, the administrator or his/her designee will determine that the resident meets admission criteria. The prospective resident will receive an explanation of the program, be given a copy of materials explaining conditions of residency, and be offered the opportunity to visit the facility. Sufficient information will be obtained from the prospective resident, a relative and/or agencies providing services to determine eligibility for admission and service needs. In the case of individuals referred for emergency or crisis-respite admission, the information obtained may be less extensive than for regular admissions but must be sufficient to determine that the resident meets admission criteria and that the facility is appropriate considering the individual's needs. Screening information will include, but not be limited to, the following:

(a) Written documentation that the prospective resident has, or is suspected of having, a mental or emotional disorder;

(b) Background information including a mental health assessment and describing previous living arrangements, service history, behavioral issues and service needs;

(c) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the individual's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(d) Copies of documents, or other documentation, relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions (as applicable);

(e) A copy of the prospective resident's most recent mental health treatment plan, or in the case of an emergency or crisis-respite admission, a summary of current mental health treatment involvement; and

(f) Documentation of the prospective resident's ability to evacuate the building consistent with the facility's designated evacuation capability and other concerns about potential safety risks.

(6) Admission Criteria. Persons considered for admission will:

(a) Be assessed to have a mental or emotional disorder, or a suspected mental or emotional disorder;

(b) Be in need of care, treatment and supervision;

(c) Be at least 18 years of age;

(d) Not require continuous nursing care, unless a reasonable plan to provide such care exists, the need for residential treatment supersedes the need for nursing care, and the Division approves the placement;

(e) Have an evacuation capability consistent with the facility's SR Occupancy classification; and

(f) Meet additional criteria required or approved by the Division through contractual agreement or condition of licensing.

(7) Admission Decisions. An admission decision will be made based upon the existence of an opening within the facility, a review of screening materials at a pre-admission meeting and a determination that the resident meets the admission criteria. A pre-admission meeting will be scheduled to include the facility administrator or designee, the potential resident and his/her legal guardian (as applicable). With the prospective resident's consent, the pre-admission meeting may also include family member(s) or other representative(s) as appropriate, representative(s) of relevant service providing agencies, and others with an interest in the resident's admission. Potential residents, their legal guardian (as applicable) and authorized representative will be informed of admission decisions within 72 hours. When admission is denied, the prospective applicant, their legal guardian (as applicable) and authorized representative will be informed in writing of the basis for the decision and their right to appeal the decision in accordance with OAR 309-035-0157.

(8) Informed Consent for Services. Each resident, or his/her guardian (as applicable), will provide informed consent for services upon admission to the facility, unless the resident's ability to do so is legally restricted.

(9) Orientation. Upon admission, the administrator or his/her designee will provide an orientation to each new resident that includes, but is not limited to, a complete tour of the facility, introductions to other residents and staff, discussion of house rules, explanation of the laundry and

food service schedule and policies, review of resident rights and grievance procedures, explanation of the fee policy, discussion of the conditions under which residency would be terminated, and a general description of available services and activities. During the orientation, advance directives will be explained. If the resident does not already have any advance directive(s), she/he will be given an opportunity to complete them. Orientation will also include a description of the facility's emergency procedures in accordance with OAR 309-035-0130(2).

(10) Record Preparation. A resident record will be established concurrent with the resident's admission. Prior to admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the facility will determine with whom communication needs to occur and will attempt to obtain the needed authorizations for release of information. The record established upon admission will include the materials reviewed in screening the resident, the summary sheet and any other available information. Every effort will be made to complete the resident record consistent with OAR 309-035-0117(4) in a timely manner. The assessment and residential service plan will be completed in accordance with OAR 309-035-0159. Records on prescribed medications and health needs will be completed as specified in OAR 309-035-0170.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0150
Termination of Residency

(1) Responsibility for Termination Process. Each facility's termination policy and procedures will specify who is responsible for each step of the process for terminating residency. Responsibilities will be organized and assigned to promote a fair and efficient termination process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the Administrator will be responsible for initiating and coordinating termination proceedings. An effort will be made to prevent unnecessary terminations by making reasonable accommodations within the facility.

(2) Voluntary Termination of Residency. A resident or guardian (as applicable) may terminate residency in a facility upon providing at least 30 days notice. Upon mutual agreement between the administrator and the resident or guardian (as applicable), less than 30 days notice may be provided.

(3) Emergency Termination of Residency. If a resident's behavior poses a serious and immediate threat to the health or safety of others in or near the facility, the administrator, after providing 24 hours written notice specifying the causes to the resident or guardian (as applicable), may immediately terminate the residency. The notice will specify the resident's right to appeal the emergency termination decision in accordance with OAR 309-035-0157.

(4) Other Terminations of Residency. When other circumstances arise providing grounds for termination of residency, the Administrator will discuss these grounds with the resident, the resident's guardian (as applicable), and with the resident's permission, other persons with an interest in the resident's circumstances. If a decision is made to terminate residency, the Administrator will provide at least 30 days written notice specifying the causes to the resident or guardian (as applicable). This notice will also specify the resident's right to appeal the termination decision in accordance with OAR 309-035-0157. Upon mutual agreement between the administrator and the resident or guardian (as applicable), less than 30 days notice may be provided. An effort will be made to establish a reasonable termination date in consideration of both facility needs and the needs of the terminated resident to find alternative living arrangements. Criteria establishing grounds for termination include:

(a) Resident no longer needs or desires services provided at the facility and/or expresses a desire to move to an alternative setting;

(b) Resident is assessed by a Licensed Medical Professional or other qualified health professional to require services, such as continuous nursing care or extended hospitalization, that are not available, or can not be reasonably arranged, at the facility;

(c) Resident's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others and these behavioral concerns cannot be adequately addressed with services available at the facility or services that can be arranged outside of the facility;

(d) Resident cannot safely evacuate the facility in accordance with the facility's SR Occupancy Classification after efforts described in OAR 309-035-0130(5)(b) have been taken;

(e) Nonpayment of fees in accordance with program's fee policy; and

(f) Resident continuously and knowingly violates house rules resulting in significant disturbance to others.

(5) Pre-termination Meeting. Except in the case of emergency terminations or crisis-respite residents, a pre-termination meeting will be held with the resident, guardian (as applicable), and with the resident's permission, others interested in the resident's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting will be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason will be documented in the resident's record.

(6) Documentation. Documentation of discussions and meetings held concerning termination of residency and copies of notices will be maintained in the resident's record.

(7) Disposition of Personal Property. At the time of termination of residency, the resident will be given a statement of account, any balance of funds held by the facility and all property held in trust or custody by the facility.

(a) In the event of pending charges (such as long distance phone charges or damage assessments), the program may hold back the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the resident will be provided a final financial statement along with any funds due to the resident.

(b) In the case of resident belongings left at the facility for longer than seven days after termination of residency, the RTF will make a reasonable attempt to contact the resident, guardian (as applicable) and/or other representative of the resident. The RTF must allow the resident, guardian (as applicable) or other representative at least 15 days to make arrangements concerning the property. If it is determined that the resident has abandoned the property, the RTF may then dispose of the property. If the property is sold, proceeds of the sale, minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the resident, will be forwarded to the resident or guardian (as applicable).

(8) Crisis-respite Services. Because crisis-respite services are time-limited, the planned end of services will not be considered a termination of residency and subject to requirements in OAR 309-035-0150(2), (4) and (5). Upon admission to crisis-respite services, the resident or guardian (as applicable) will be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the administrator and the resident or guardian (as applicable). RTFs providing crisis-respite services will implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.

(9) Absences without Notice. If a resident moves out of the facility without providing notice, or is absent without notice for more than seven consecutive days, the administrator may terminate residency in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the resident's absence. An attempt will be made to contact the resident, guardian (as applicable) and/or other person interested in the resident's circumstances to confirm the resident's intent to discontinue residency.

Stat. Auth.: ORS 409.010; 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0157
Resident Grievances and Appeals

(1) Procedures. The facility will have a written policy and procedures concerning the resident grievance and appeal process. A copy of the grievance and appeal process will be posted in a place readily accessible to residents. A copy of the grievance and appeal process will be provided to each resident and guardian (as applicable) at the time of admission to the facility.

(2) Grievances. A facility's process for grievances must, at a minimum, include the following:

(a) Residents will be encouraged to informally resolve complaints through discussion with RTF staff.

(b) If the resident is not satisfied with the informal process or does not wish to use it, the resident may proceed as follows:

(A) The resident may submit a complaint in writing to the RTF Administrator. The resident may receive assistance in submitting the complaint from any person whom the resident chooses. If requested by the resident, RTF staff will be available to assist the resident.

(B) The written complaint will go directly to the RTF Administrator without being read by other staff, unless the resident requests or permits other staff to read the complaint.

(C) The complaint will include the reasons for the grievance and the proposed resolutions. No complaint will be disregarded because it is incomplete.

(D) Within five days of receipt of the complaint, the RTF Administrator will meet with the resident to discuss the complaint. The resident may have an advocate or other person of his/her choosing present for this discussion.

(E) Within five days of meeting with the resident, the RTF Administrator will provide a written decision to the resident. As part of the written decision, the Administrator will provide information about the appeal process.

(F) In circumstances where the matter of the complaint is likely to cause irreparable harm to a substantial right of the resident before the grievance procedures outlined in OAR 309-035-0157(2)(b)(D) and (E) are completed, the resident may request an expedited review. The RTF Administrator will review and respond in writing to the grievance within 48 hours. The written decision will include information about the appeal process.

(3) Appeals. Residents, their legal guardians (as applicable) and prospective residents (as applicable) will have the right to appeal admission, termination and grievance decisions as follows:

(a) If the resident is not satisfied with the decision, the resident may file an appeal in writing within ten days of the date of the RTF Administrator's decision to the complaint or notification of admission denial or termination (as applicable).

(b) If program services are delivered by a person or entity other than the Division, the appeal will be submitted to the CMHP Director or designee in the county where the RTF is located.

(A) The resident may receive assistance in submitting the appeal. If requested by the resident, RTF staff will be available to assist the resident.

(B) The CMHP Director or designee will provide a written decision within ten days of receiving the appeal.

(C) If the resident is not satisfied with the CMHP Director's decision, the resident may file a second appeal in writing within ten days of the date of the CMHP Director's written decision to the Assistant Director of the Division or designee. The decision of the Assistant Director of the Division will be final.

(c) If program services are delivered by the Division, the appeal will be submitted to the Deputy Assistant Director or designee.

(A) The resident may receive assistance in submitting the appeal. If requested by the resident, RTF staff will be available to assist the resident.

(B) The Deputy Assistant Director or designee will review and approve or deny the appeal.

(C) The Division will notify the resident of the decision in writing within 10 days after receipt of the appeal.

(D) If the resident is not satisfied with the Deputy Assistant Director's or designee's decision, the resident may submit a second appeal in writing within ten days of the date of the written decision to the Assistant Director of the Division. The decision of the Assistant Director of the Division will be final.

Stat. Auth.: ORS 409.010; 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0165
Resident Services and Activities

(1) General Requirements. The services and activities available at the facility will include care and treatment consistent with ORS 443.400 and those services individually specified for the resident in the residential service plan developed as outlined in OAR 309-035-0159. Residents will be encouraged to care for their own needs to the extent possible. All services and activities will be provided in a manner that respects residents' rights, promotes recovery and affords personal dignity.

(2) Services and Activities to Be Available. Services and activities to be available will include but not be limited to:

(a) Provision of adequate shelter consistent with OAR 309-035-0125 through 309-035-0140;

(b) At least three meals per day, seven days per week, provided in accordance with OAR 309-035-0170;

(c) Assistance and support, as necessary, to enable residents to meet personal hygiene and clothing needs;

(d) Laundry services, which may include access to washer(s) and dryer(s) so residents can do their own personal laundry;

(e) Housekeeping essential to the health and comfort of residents;

(f) Activities and opportunities for socialization and recreation both within the facility and in the larger community;

(g) Health-related services provided in accordance with OAR 309-035-0175;

(h) Assistance with community navigation and transportation arrangements;

(i) Assistance with money management, where requested by a resident, to include accurate documentation of all funds deposited and withdrawn when funds are held in trust for the resident;

(j) Assistance with acquiring skills to live as independently as possible;

(k) Assistance with accessing other additional services, as needed; and

(l) Any additional services required under contract the Division.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0167
Use of Seclusion or Restraints

(1) General Prohibition. The use of seclusion or restraints is prohibited, except in Secure Residential Treatment Facilities with the Division's approval.

(2) Approval of Use in Secure Residential Treatment Facilities. A Secure Residential Treatment Facility provider or applicant may submit an application to the Division for approval to use seclusion or restraints pursuant to OAR 309-033-0700 through 309-033-0740. Approval by the Division will be based upon the following:

(a) A determination that the residents served, or proposed to be served, have a history of behavioral concerns involving threats to the safety and well-being of themselves or others;

(b) The applicant demonstrates that the availability of seclusion or restraints is necessary to safely accommodate persons who would otherwise be unable to experience a community residential program; and

(c) The applicant demonstrates an ability to comply with OAR 309-033-0700 through 309-033-0740 and 309-033-0500 through 309-033-0560. These rules include special requirements for staffing, training, reporting, policies and procedures, and the facility's physical environment.

(3) Conditions of Use. Seclusion or restraints will only be used in approved Secure Residential Treatment Facilities when an emergency occurs in accordance with OAR 309-033-0700 through 309-033-0740 and 309-033-0500 through 309-033-0560. In such emergency situations, seclusion and restraint will be used as a last resort behavior management option after less restrictive behavior management interventions have failed, or in the case of an unanticipated behavioral outburst, to insure safety within the facility. Approved Secure Residential Treatment Facilities will implement policies and procedures approved by the Division outlining the circumstances under which seclusion or restraints would be used and the preventive measures to be taken before such use. All incidents involving the use of seclusion or restraints will be reported to the Division. In order to use seclusion or restraints with a resident who is not in state custody under civil commitment proceedings, the resident must be placed on a hold.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0170
Food Services

(1) Well-balanced Diet. Meals will be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid.

(2) Modified or Special Diets. An order from a Licensed Medical Professional will be obtained for each resident who, for health reasons, is on a modified or special diet. Such diets will be planned in consultation with the resident.

(3) Menus. Menus will be prepared at least one week in advance and will provide a sufficient variety of foods served in adequate amounts for each resident at each meal and adjusted for seasonal changes. Records of menus, as served, will be filed and maintained in the facility for at least 30 days. Resident preferences and requests will be considered in menu planning. Religious and vegetarian preferences will be reasonably accommodated.

(4) Supply of Food. Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days will be maintained on the premises.

(5) Sanitation. Food will be stored, prepared and served in accordance with Health Services Food Sanitation Rules.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0185
Civil Penalties

(1) Applicability of Long Term Care Statute. For purposes of imposing civil penalties, residential treatment facilities licensed under ORS 443.400 to 443.455 and subsection (2) of ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Sections of Rule Subject to Civil Penalties. Violations of any requirement within any part of the following sections of the rule may result in a civil penalty:

(a) 309-035-0110;
(b) 309-035-0113;
(c) 309-035-0115;
(d) 309-035-0117;
(e) 309-035-0120;
(f) 309-035-0125;
(g) 309-035-0130;
(h) 309-035-0135;
(i) 309-035-0140;
(j) 309-035-0145;
(k) 309-035-0150;
(l) 309-035-0155;
(m) 309-035-0157;
(n) 309-035-0159;
(o) 309-035-0165;
(p) 309-035-0167;
(q) 309-035-0170; and
(r) 309-035-0175.

(3) Assessment of Civil Penalties. Civil penalties will be assessed in accordance with the following guidelines:

(a) Civil penalties, not to exceed $250 per violation to a maximum of $1,000, may be assessed for general violations of these rules. Such penalties will be assessed after the procedures outlined in OAR 309-035-0110(8) have been implemented;

(b) A mandatory penalty up to $500 will be assessed for falsifying resident or facility records or causing another to do so;

(c) A mandatory penalty of $250 per occurrence will be imposed for failure to have direct care staff on duty 24 hours per day;

(d) Civil penalties up to $1,000 per occurrence may be assessed for substantiated abuse;

(e) In addition to any other liability or penalty provided by the law, the Division may impose a penalty for any of the following:

(A) Operating the RTF without a license;

(B) Operating with more residents than the licensed capacity; and

(C) Retaliating or discriminating against a resident, family member, employee, or other person for making a complaint against the program.

(f) In imposing a civil penalty, the following factors will be taken into consideration:

(A) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(B) Any prior violations of statutes, rules or orders pertaining to the facility;

(C) The economic and financial conditions of the person incurring the penalty;

(D) The immediacy and extent to which the violation threatens or threatened the health, safety or welfare of one or more residents; and

(E) The degree of harm caused to residents.

(4) Notification. Any civil penalty imposed under this section will become due and payable ten days after notice is received, unless a request for a hearing is filed. The notice will be delivered in person, or sent by registered or certified mail and will include a reference to the particular section of the statute or rule involved, a brief summary of the violation, the amount of the penalty or penalties imposed, and a statement of the right to request a hearing.

(5) Request for Hearing. The person to whom the notice is addressed will have ten days from the date of receipt of the notice to request a hearing. This request must be in writing and submitted to the Assistant Director of the Division. If the written request for a hearing is not received on time, the Division will issue a final order by default.

(6) Hearings. All hearings will be conducted pursuant to the applicable provisions of ORS 183.310 and 183.411 to 183.502.

(7) Judgment. Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person. The Division may also take action to revoke the license upon failure to comply with a final order.

(8) Judicial Review. Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(9) Disposition of Funds. All penalties recovered under ORS 443.790 to 443.815 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

309-035-0190
Criminal Penalties

(1) Specification of Criminal Penalty. Violation of any provision of ORS 443.400 through 443.455 is a Class B misdemeanor.

(2) Grounds for Law Suit. In addition, the Division may commence an action to enjoin operation of a Residential Treatment Facility:

(a) When a Residential Treatment Facility is operated without a valid license; or

(b) When a Residential Treatment Facility continues to operate after notice of revocation has been given and a reasonable time has been allowed for placement of residents in other facilities.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)
Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08

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

Rule Caption: Variance Process for Criminal History Check Rules for Department Employees, Volunteers, and Contractors.
Adm. Order No.: DHSD 3-2008(Temp)
Filed with Sec. of State: 5-22-2008
Certified to be Effective: 5-22-08 thru 11-17-08
Notice Publication Date:
Rules Adopted: 407-007-0100
Subject: The Department of Human Services (Department) currently conducts criminal history checks for all its employees, applicants or persons offered employment, volunteers, and contractors under OAR 407-007-0000 through 407-007-0090. In certain specific and time-limited instances, the process for criminal history checks needs to be modified. To protect the Department, its clients, and vulnerable persons, this process should only be reviewed as a variance to determine risk. This variance rule allows for variance requests to be reviewed and processed.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0100
Variances

(1) Criteria for a Variance. The Department may grant a variance based upon a demonstration by the Department program area or work unit that the variance would not pose a significant risk to the Department, its clients, or vulnerable individuals.

(2) Variance Application. The program office or work unit requesting a variance shall submit, in writing, an application to the Department's Administrative Services Division 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) An explanation on how the safety and well-being of the Department or affected individuals will be ensured during the time the variance period is in effect.

(3) Department Review. The Assistant Director of the Department's Administrative Services Division or designee may approve or deny the request for a variance.

(4) Notification. The Department shall notify the program office or work unit of the decision. This notice shall be sent within 30 days of receipt of the request by the Department with a copy to other relevant sections of the Department.

(5) Appeal Application. Appeal of the denial of a variance request shall be made in writing to the Assistant Director of the Department's Administrative Services Division, whose decision shall be final.

(6) Duration of Variance. The duration of the variance shall be determined by the Department. All reapplications for variances shall be submitted before the duration of the variance expires.

(7) Implementation. The Department program office or work unit may implement a variance only after written approval is received from the Department.

(8) No Precedent. Granting a variance does not set a precedent for subsequent requests for variances.

(9) Fitness Determination Outcomes Not Subject. The outcome of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made through contested case hearing rights set forth in these rules or alternative options available to Department employees.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.050
Hist.: DHSD 3-2008(Temp). f. & cert. ef. 5-22-08 thru 11-17-08

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Rule Caption: Reporting and Investigation of Child Abuse and Neglect in Children's Care Programs.
Adm. Order No.: DHSD 4-2008
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 5-30-08
Notice Publication Date: 5-1-2008
Rules Adopted: 407-045-0800, 407-045-0810, 407-045-0820, 407-045-0830, 407-045-0850, 407-045-0860, 407-045-0870, 407-045-0880, 407-045-0890, 407-045-0900, 407-045-0910, 407-045-0920, 407-045-0930, 407-045-0940, 407-045-0950, 407-045-0960, 407-045-0970, 407-045-0980
Rules Repealed: 407-045-0800(T), 407-045-0810(T), 407-045-0820(T), 407-045-0830(T), 407-045-0840(T), 407-045-0850(T), 407-045-0860(T), 407-045-0870(T), 407-045-0880(T), 407-045-0890(T), 407-045-0900(T), 407-045-0910(T), 407-045-0920(T), 407-045-0930(T), 407-045-0940(T), 407-045-0950(T), 407-045-0960(T), 407-045-0970(T), 407-045-0980(T)
Subject: These rules govern the reporting and investigation of reports of child abuse and neglect in Children's Care Programs (CCPs). CCPs include Residential Care Agencies, Day Treatment Programs, Foster Care Agencies, Therapeutic Boarding Schools, and Outdoor Youth Programs. These rules establish how child abuse must be reported, and how those reports will be screened and investigated by the Department's Office of Investigations and Training (OIT). These rules provide for an appeals process for any person substantiated as responsible for the abuse or neglect of a child receiving services from a CCP. The temporary rules effective December 3, 2007 through May 30, 2008 are repealed with this filing.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-045-0800
Scope

These rules (OAR 407-045-0800 through 407-045-0980) prescribe standards and procedures for investigating, assessing, and providing protective services in certain therapeutic or treatment program, when abuse or neglect of a child is reported to have occurred. Specifically, these rules govern children's Residential Care Agencies, Day Treatment Programs, Therapeutic Boarding Schools, Foster Care Agencies, and Outdoor Youth Programs (hereafter, "Children's Care Providers" or "CCPs"). These rules also set forth the nature and content of the abuse investigation and the protective services report and set forth review rights and procedure.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.005 - 419B.050, 418.205 - 418.327, 409.185, & 418.015
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0810
General Policy and Applicability

(1) Every child deserves safe, respectful, and dignified treatment provided in a caring environment. All CCPs governed by these rules, and their staff shall conduct themselves in such a manner that children are free from abuse.

(2) In these rules, the term "abuse" is defined in some detail because of the unique vulnerabilities of children served by CCPs, and the nature of the settings where abuse may occur. All forms of abuse are prohibited. CCPs and their staff must always be aware of the potential for abuse in interactions with children.

(3) Each case shall be evaluated based upon the facts available, and upon the individual circumstances of the child, including the child's particular vulnerabilities and needs.

(4) These rules govern reports of abuse or neglect in which the CCP, or its staff, is reported to be responsible. All such reports shall be investigated by the Department's Office of Investigations and Training (OIT).

(5) Nothing in these rules relieves any mandatory reporter, including a CCP, from reporting abuse or neglect alleged to have been caused by other individuals, including but not limited to family members. Those reports will continue to be investigated by the Department's Children, Adults and Families Division (CAF) or by law enforcement.

Stat. Auth: ORS 418.005 & 418.189
Stats. Implemented: ORS 418.189 & 418.205 – 418.327
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0820
Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" under these rules includes but is not limited to:

(a) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as those acts are defined in ORS chapter 163.

(d) Sexual abuse, as defined in ORS chapter 163.

(e) Sexual exploitation which includes but is not limited to:

(A) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces, or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording, or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in 167.002 or described in 163.665 and 163.670,

(B) Sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; or

(C) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(f) Negligent treatment of a child, which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare. Negligent treatment also includes, but is not limited to failure to supervise a child, or failure to intervene when a child needs assistance or care, that is likely to endanger the child's health or welfare.

(g) Maltreatment of child, which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare. Maltreatment also includes but is not limited to the willful infliction of pain or injury, hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, exposure to domestic violence, the use of unnecessary or excessive physical force, or other physical contact with a child inconsistent with prescribed treatment or care, the use of derogatory names, phrases or profanity, ridicule, harassment, coercion, or intimidation, that is likely to endanger the child's health or welfare.

(h) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(i) Buying or selling an individual under 18 years of age as described in ORS 163.537.

(j) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(k) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(2) "Child" means an unmarried individual under 18 years of age.

(3) "Children's Care Provider (CCP)" means a licensed Residential Care Agency, Day Treatment Program, Foster Care Agency, Therapeutic Boarding School, or Outdoor Youth Program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.

(4) "Day Treatment Program" means a licensed CCP that provides day treatment services.

(5) "Day Treatment Services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.

(6) "Department" means the Department of Human Services.

(7) "Designated Medical Professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to 418.782.

(8) "Foster Care Agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.

(9) "Inconclusive" means the investigator is unable to determine whether there is reasonable cause to believe abuse did or did not occur, based upon the available evidence.

(10) "Legal Finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.

(11) "Mandatory Reporter" means an individual or entity having a duty to report as defined in ORS 419B.005 through 419B.050.

(12) "Not Substantiated" means the allegation is unfounded because the investigator concludes there is no reasonable cause to believe abuse occurred, based on the available evidence.

(13) "OIT" means the Department's Office of Investigations and Training.

(14) "OIT Investigator" means an employee of the Department's OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.

(15) "OIT Substantiation Review Committee (OSRC)" means a group of three (3) Department employees selected by the deputy director of the Department, or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee must include the following members:

(a) A Department employee from the Children, Adults and Families Division (CAF) with knowledge about the dynamics of child abuse and neglect, and with knowledge of the screening, assessment, or investigation of child abuse and neglect. This committee member may be a CAF employee from the Division's central office or from a CAF field office;

(b) A CAF child protective services consultant;

(c) A Department employee with knowledge of protective service investigations, especially investigations of alleged abuse and neglect of vulnerable populations receiving services in out-of-home settings.

(16) "Outdoor Youth Program" means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral problems, mental problems, or problems with abuse of alcohol or drugs. "Outdoor Youth Program" does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other authority of the Department. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.

(17) "Person" means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.

(18) "Protective Action" means a set of services or activities undertaken to address and meet a child's safety needs after a report of abuse has been received by OIT.

(19) "Residential Care Agency" means a licensed child-caring agency that provides services to children 24 hours a day.

(20) "Substantiated" means the allegation is founded, because available evidence supports a conclusion that there is reasonable cause to believe that abuse or neglect occurred.

(21) "Suspicious Physical Injury" which is defined in ORS 419B.005 and includes but is not limited to burns or scalds, extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child's developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.

(22) "Therapeutic Boarding School" means a licensed organization or a program in an organization that:

(a) Is primarily a school and not a residential care agency;

(b) Provides educational services and care to children 24 hours a day; and

(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or assuring that children receive therapeutic services.

Stat. Auth.: ORS 418.005 & 409.050
Stats. Implemented: ORS 409.185, 418.005, 418.189, 419B.005 - 419B.050, 418.205 - 418.327, 419B.328 & 418.747
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0830
Training of Children's Care Providers

(1) The Department shall provide training and consultation to CCPs to identify abuse and to prevent abuse from occurring.

(2) The Department shall provide training to assist CCPs to understand the abuse investigation process and the CCPs responsibility in cooperating with the investigation.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.189 & 418.702
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0850
Responsibilities of the CCP

(1) Mandatory Reporting. CCPs and their staff are mandatory reporters governed by ORS 419B.005 through 419B.050. Mandatory reporters must immediately report when they have reasonable cause to believe any child with whom they have come in contact has suffered abuse or that any person with whom they have come in contact has abused a child. For purposes of reporting, the belief need only be a reasonable suspicion, the belief need not rise to the level of probable cause. All reports must be made verbally or in writing to the Department or to a law enforcement agency within the county where the individual making the report is located at the time of the contact.

(2) Protective Action and Safety Planning. Concurrent with reporting the suspected abuse or neglect of a child, CCPs shall immediately assess the safety of the child and take any action necessary to remove the child from danger and keep the child safe. CCPs shall cooperate with OIT in establishing a safety plan for the child who is the subject of the report, and for other children who may be at risk of abuse or neglect. In establishing a safety plan, CCPs may not take any actions beyond determining:

(a) Whether the alleged victim is in danger or in need of immediate protective services, in light of the nature of the report; and

(b) Whether any immediate personnel action needs to be taken.

(3) Documentation. CCPs shall document all reports of suspected abuse or neglect of a child, including, to the extent possible, the following information:

(a) The name, age, and present location of the child;

(b) The names and addresses of individuals, programs, or facilities responsible for the child's care;

(c) The nature and extent of the alleged abuse;

(d) Any information that led the individual making the report to suspect abuse had occurred;

(e) Any information that the individual believes might aid in establishing the cause of the abuse and the identity of the individual alleged to be responsible for the abuse; and

(f) The date of the incident.

(4) Cooperation with OIT screening and investigation. Every CCP shall cooperate fully with OIT under these rules. Cooperation includes but is not limited to:

(a) Providing the investigator with access to the child, the facility, and to all potential witnesses; and

(b) Producing all records and reports requested, including but not limited to medical, psychiatric and psychological records and reports, and individual service or behavioral support plans for the child.

(5) Prohibition against internal investigation. When abuse of a child is reported, and law enforcement or OIT is screening or investigating the report, the CCP must not conduct an internal investigation without prior authorization from OIT, except for those initial activities necessary for protection and safety planning, as described in section (2) above. CCPs shall not:

(a) Conduct interviews with the alleged victim, witnesses, the accused person, or any other individual or witness who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Review relevant evidence, other than the initial report; or

(c) Take any other actions beyond those required to protect the child and plan for safety, as described in section (2) above.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.010 - 419B.015
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0860
Responsibilities of the Office of Investigations and Training

(1) Cross-Reporting to Law Enforcement. When OIT receives a report of abuse, OIT shall notify a law enforcement agency within the county where the report was made. If the abuse is reported to have occurred in a different county, OIT must also cross-report to the law enforcement agency in the county where the reported abuse occurred.

(2) Same Day Reporting. OIT shall cross-report to law enforcement on the same day the OIT screener determines the report requires an immediate or a 24-hour response.

(a) Required same day cross-reports include, but are not limited to, reports of moderate to severe physical abuse, visible injuries to a child, sexual abuse, or suspicious or unexpected death of a child. Same day reports may be cross-reported verbally, by electronic transmission, or by hand delivery.

(b) When a cross-report is verbal and OIT and law enforcement do not respond to the report together, OIT must send a completed screening report to law enforcement.

(3) Ten Day Reporting. All other reports, including those investigated at screening but closed, must be cross-reported to law enforcement no later than ten days after the Department receives the report. The cross-report may be made by electronic transmission, hand delivery, or regular mail.

(4) Notices. When OIT receives a report of alleged abuse or neglect, OIT shall notify the child's parent or legal guardian that an allegation has been made, unless notice is prohibited by law or court order, or would compromise the child's safety or a criminal investigation. If the child is in the legal custody of the Department, OIT will notify the child's assigned Department caseworker, if notice has not already been provided. If the child has been placed at the CCP through the Oregon Youth Authority (OYA), OIT shall notify OYA. If OIT has reason to believe the child is an Indian child, OIT shall notify the tribe within 24 hours from the time the report was received by the Department. In cases in which OIT finds reasonable cause to believe that a child has died as a result of abuse or where the death occurred under suspicious or unknown circumstances, OIT shall notify the appropriate law enforcement agency.

Stat. Auth: ORS 418.005
Stats. Implemented: ORS 418.005 & 419B.005 - 419B.050
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0870
Office of Investigations and Training Screening Decision Time Frames

(1) Child Reported to be Unsafe. When the information received constitutes a report of abuse in which a child may be unsafe, OIT shall interview the child, conduct a site visit, or coordinate with CCP staff to assure that the child is safe within 24 hours after the report is received. If OIT plans to interview the child, OIT must notify the child's parent or legal guardian, unless notification is prohibited by law or court order, or could compromise the child's safety or a criminal investigation.

(2) Child Not Reported to be Unsafe. When it has not been reported that the child is unsafe, and there are no other indicators the child is unsafe, OIT will decide to open the case for investigation or to close it at screening. OIT must make the decision to open or close the case within five (5) calendar days from the date the report is received by the Department. The OIT screener may request approval for an extension of time beyond five days if extenuating circumstances exist. Extensions may only be granted by the OIT director or the director's designee.

(3) Investigatory Screening Process. All reports shall be screened to identify the nature and cause of the reported abuse.

(a) In all cases, the screener shall evaluate whether the child is safe or unsafe, assess the need for protective action, request that protective action be taken and services provided as needed, and assess the need for further investigation.

(b) In conducting the screening process, OIT may:

(A) Coordinate in-person or by telephone with any CCP staff authorized to take protective action on behalf of the child;

(B) Conduct a site visit at the CCP;

(C) Interview the child, or other witnesses;

(i) Prior to interviewing a child victim or child witness, OIT shall give notice of its intent to interview to the child's legal guardian, unless notice is prohibited by law or court order, or would compromise the child's safety or a criminal investigation.

(ii) If OIT determines contact with the child should occur at the child's school, OIT shall comply with the requirements of ORS 419B.045.

(D) Gather and secure physical evidence as necessary;

(E) Take photographs of the child and obtain a medical assessment, as necessary, consistent with OAR 407-045-0880(2)(d) and (e) of this rule;

(F) Take photographs of the facility as necessary or appropriate; and

(G) Receive, review, or copy records pertaining to the child or the incident, including but not limited to, incident reports, evaluations, treatment or support plans, treatment notes or progress records, or other documents concerning the welfare of the child.

(4) Closed at Screening. If OIT decides the information received does not constitute a report of child abuse or neglect as defined in these rules, the report will be closed at screening. If the report is closed at screening, the screener shall document the information supporting the decision to close. If the child is in the legal custody of the Department, OIT will notify the child's assigned caseworker of the decision to close the case. If the child has been placed in the CCP by OYA, OIT will notify OYA. OIT will notify the CCP and the individual who made the report, that the report has been closed. All notices of the decision to close shall be made within three days of the decision.

(5) Opening a Case for Investigation after Screening. If, after screening, OIT determines that the information constitutes a report of child abuse or neglect under these rules, it shall open the case for investigation. If OIT decides to investigate, it shall immediately notify the child's legal guardian, unless notification is specifically prohibited by law or by court order, or could compromise the child's safety or a criminal investigation. OIT shall also notify the child's caseworker if the child is in the legal custody of the Department, and will notify OYA or the child's tribe, as applicable.

(6) Coordination with the Department's Children, Adults and Families Division (CAF) when children are in Department custody. Whenever an OIT investigator takes photographs of physical injuries to a child who is in the custody of the Department, the investigator shall promptly forward copies of the photographs to the CAF caseworker assigned to the child. When conducting screenings or investigations in foster home settings, the investigator shall ascertain whether any other children living in the foster home are in the custody of the Department; and if so, shall notify each child's caseworker that a report of abuse or neglect in the foster home is being investigated or screened, and the nature of the investigation.

Stat. Auth: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.015, 419B.017 & 419B.020
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0880
OIT Investigative Process in Cases Opened for Investigation

(1) OIT will conduct thorough and unbiased investigations of abuse allegations.

(2) In conducting abuse investigations, the OIT investigator shall:

(a) Make in-person contact with the child;

(b) Interview the child, any witnesses, the accused person and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances. Any individual providing peer support or consultation to a foster parent who is the subject of any interview shall be obligated to maintain the confidentiality of information declared to be confidential under State or Federal laws;

(c) Review all relevant and material evidence;

(d) Take photographs as appropriate or necessary. If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of

abuse, the investigator will immediately photograph or have photographed the suspicious physical injury, pursuant to ORS 418.747; and

(e) If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must, pursuant to ORS 418.747, ensure that a designated medical professional conducts a medical assessment within 48 hours of the observation, or sooner if dictated by the child's medical needs. If a designated medical professional is not available, the investigator must ensure that an available physician conducts the medical assessment. The investigator must document the efforts made to locate the designated medical professional.

(3) When a law enforcement agency is conducting an investigation of the alleged abuse, the OIT investigator shall cooperate with the law enforcement agency. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also conduct its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:

(a) There is potential for action by a licensing agency;

(b) Timely investigation by law enforcement is not likely; or

(c) When the law enforcement agency does not complete a criminal investigation.

(4) During the investigation, if the investigator knows or has reason to know the child is an Indian child, the investigator must give notice to the child's tribe within 24 hours that an investigation is being conducted, if the Tribe has not already been notified.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 419B.005 - 419B.050, 418.747 & 419B.045
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0890
Abuse Investigation and Protective Services Report

(1) When the investigation is complete, OIT will issue a final decision stating whether the allegation is substantiated, not substantiated, or inconclusive, and will prepare a written report which must include:

(a) A description of the allegation being investigated, including the date, location and time;

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, not substantiated, or inconclusive;

(e) A list of protective services provided to the child to the date of the report;

(f) A plan of action necessary to prevent further abuse of the child;

(g) Any additional corrective action required by the CCP and deadlines for completing the action;

(h) A list of any notices made to licensing or certifying agencies; and

(i) The name and title of the individual completing the report.

(2) The report must be competed within 30 days from the date the case was opened for investigation. The OIT Director or designee may authorize an extension of time for completion of the report for good cause shown.

(3) The report and underlying investigatory documents are confidential and not available for public inspection. Except as provided in ORS 419B.035, names of witnesses and the alleged abuse victim are confidential unless the provisions of 419B.035(1)(h) and (2)(a) apply. The names and identifying information about a reporter are confidential and shall not be disclosed. Investigatory documents, including portions of the abuse investigation and protective services report that contains "individually identifiable health information," as that term is defined in 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2. The Department shall make otherwise confidential records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) and other federal and state confidentiality laws.

(4) Except as provided in section (3) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities, and to any public agency providing protective services for the child.

(5) Subject to ORS 419B.035(3) the Department may make the protective services report or relevant materials, in redacted form, available to the CCP, any public agency that licenses or certifies the individuals working in a CCP, or to any person who was alleged to have abused or neglected the child. The Department shall not disclose confidential information which is prohibited by state or federal law.

(6) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and shall not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.015, 419B.005 -419B.050, 419B.035 & 409.225
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0900
Right to Request Review of a Substantiated Finding of Abuse

(1) When OIT has substantiated that abuse of a child has occurred, the person against whom the finding has been made has the right to request an administrative review of the OIT decision following the procedure set forth in OAR 407-045-0940.

(2) When OIT issues a substantiated abuse report, OIT shall also include written notice of the person's right to request an administrative review.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.010 & 419.370
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0910
Providing Notice of an OIT Substantiation

OIT must deliver a notice of an OIT substantiation of abuse or neglect to the person identified as the person substantiated in the OIT report. The notice must be delivered:

(1) By certified mail, restricted delivery, return receipt requested to the last known address of the person; or

(2) By hand delivery to the person. If hand delivered, the notice must be addressed to the person and a copy of the notice must be signed and dated by the person acknowledging receipt and also signed by the person delivering the notice.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0920
Claim of Lack of Notice

(1) If a person believes he or she is entitled to a notice of OIT substantiation but has not received one, the person may contact OIT to inquire about a review of the disposition.

(2) OIT must determine whether a notice of OIT substantiation was delivered to the person or the person refused delivery of the notice, as evidenced by the returned receipt.

(3) If a notice was delivered to the person or the person refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OIT must:

(a) Prepare and deliver a notice of waived rights for review; or

(b) Inform the person by telephone of the information required in the notice of waived rights for review. OIT must document the telephone call.

(4) If no return receipt exists or if it appears that notice was not properly provided, OIT must deliver a notice of OIT substantiation as provided in these rules.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0930
Information Included in the Notice of an OIT Substantiation

The notice of an OIT substantiation must include the following:

(1) The case number assigned to the investigation that resulted in the OIT substantiation;

(2) The full name of the person who has been identified as responsible for the child abuse as recorded in the OIT report;

(3) A statement that the OIT investigation resulted in a substantiation, including a description of the type of child abuse or neglect identified;

(4) A description of the OIT investigation, including a summary of findings and conclusions;

(5) A statement that the person has a right to request a review;

(6) Instructions for making a request for review, including the requirement that the person provide a full explanation why the person believes the OIT substantiation is wrong;

(7) A statement that the Department will not review an OIT substantiation if a legal proceeding is pending and that the person may request a review within 30 calendar days of the resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the OIT substantiation;

(8) A statement that the person waives the right to request a review if the request for review is not received by OIT within 30 calendar days from the date of the notice of OIT substantiation, as documented by a returned receipt.

(9) A statement that the OSRC will consider relevant documentary information, including the OIT report and accompanying exhibits, and information submitted with the request for review by the person requesting review.

(10) A statement that the OSRC will not re-interview the victim; interview or meet with the person, with others associated with the person, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse; and

(11) A statement that OIT will send the person a notice of OSRC decision within 60 calendar days of receiving a request for review.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0940
Requesting Review of an OIT Substantiation

A person requesting a review must use information contained on the notice of OIT substantiation to prepare a written request for review. The written request for review must be received by OIT within 30 calendar days of the receipt of the notice of OIT substantiation. If request is submitted by mail, it must be postmarked within 30 calendar days. The request must include the following:

(1) Date the request for review is written;

(2) Case number found on the notice of OIT substantiation;

(3) Full name of the person;

(4) The person's current name (if it has changed from the name noted in section (3) of this section);

(5) A full explanation, responsive to the information provided in the Department's notice, explaining why the person believes the OIT substantiation is wrong and any additional information and documents the person wants considered during the review;

(6) The person's current street address and telephone number; and

(7) The person's signature.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0950
When Legal Findings Precludes Right to Request a Review and Providing Notice of Legal Proceeding

(1) If OIT has knowledge of a pending legal proceeding, the OSRC will not review the disposition until the legal proceeding is completed.

(2) If OIT has knowledge of a pending legal proceeding, OIT must prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person that the Department will not review the substantiation until the legal proceeding is completed and will take no further action on the request.

(3) If the completed legal proceeding results in a legal finding consistent with the OIT substantiation, the Department may not conduct a review. In that case, OIT will provide a notice of legal finding to the person.

(4) If the completed legal proceeding results in a legal finding which is not consistent with the OIT substantiation, the person may, at the conclusion of the legal proceeding, re-submit a request for review within 30 calendar days from the date of resolution of legal proceeding.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0960
OIT Responsibilities Related to Notices and Reviews

(1) If a person asks to review Department records for the purpose of reviewing an OIT substantiation, state and federal confidentiality laws, including OAR 413-010-0000 through 413-010-0075 and 413-350-0000 through 413-350-0090 govern the inspection and copying of records.

(2) OIT must maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a notice of OIT substantiation;

(b) Whether the notice of OIT substantiation was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received; and

(c) The date a request for review was received by OIT.

(3) The OIT director or designee must maintain a comprehensive record of completed OIT substantiation reviews.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0970
OSRC Review

(1) The OSRC will conduct a review and issue a notice of OSRC decision within 60 calendar days from the date OIT receives a request for review.

(2) The OSRC operates as follows:

(a) The OSRC considers relevant documentary information contained in the OIT investigation file, investigative report and exhibits, and information provided by the person.

(b) The OSRC will not re-interview the victim; interview or meet with the person, with others associated with the person, or with others mentioned in the report, or conduct a field assessment of the allegation of child abuse or neglect.

(c) All OSRC decisions must be decided by majority vote of the five participating committee members, all of whom must be present.

(d) The OSRC shall make a determination as to:

(A) Whether there is reasonable cause to believe that child abuse or neglect occurred;

(B) Whether there is reasonable cause to believe that the person is responsible for the child abuse or neglect; and

(C) Whether there is reasonable cause to believe the type of abuse is correctly identified in the report.

(e) The OSRC will decide to either uphold the OIT substantiation, or change that conclusion to not substantiated or inconclusive.

(3) Within 60 calendar days from the date the OSRC receives the request for review, the OSRC will prepare and send to the requestor by certified mail or restricted delivery, with return receipt requested, a notice of OSRC decision that includes the following information:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe that the person was responsible for the child abuse;

(c) Whether the OSRC is changing the OIT substantiation;

(d) If the OIT substantiation is changed, whether the changed conclusion will be changed to "Not Substantiated" or "Inconclusive;"

(e) If the OIT substantiation is upheld but the type of abuse is changed, notice that the person has the right to request a new OSRC review based on the change; and

(f) A summary of the information used by the OSRC and its reasoning in reaching its decision.

(4) OSRC shall send the notice of OSRC decision to the person, CAF, the OIT investigator who conducted the investigation, applicable public agencies licensing or certifying facilities or the person practicing therein, and the OIT director.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

407-045-0980
Retaliation Prohibited

No individual, including a child who reports suspected abuse, shall be subject to retaliatory action by a CCP.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08

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

Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 4-2008
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 6-1-08
Notice Publication Date: 2-1-2008
Rules Amended: 413-120-0060
Rules Repealed: 413-120-0060(T)
Subject: OAR 413-120-0060 about the process for reviewing an adoption committee's decision is being amended to make permanent a temporary rule amendment adopted on December 12, 2007 and allow the Assistant Director of the Children, Adults and Families Division of the Department of Human Services, if the deadline for judicial review has not expired, to withdraw and reconsider the adoption committee's decision on adoption placement for a child who is in the permanent custody of the Department or a legal risk adoptive placement.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0060
Review of Adoption Committee Decision

(1) Committee Decisions are Final. All decisions of Department adoption committees are final and do not qualify for a contested case hearing. Adoption committee decisions, including the current caretaker decision making process (i.e., preliminary and final recommendations), may be reviewed as provided in this rule.

(2) At Assistant Director's Discretion. The Assistant Director of CAF or the Assistant Director's designee may, on his or her initiative, review an adoption committee's decision. If there is no request for review, and if the Assistant Director or Assistant Director's designee decides to review the decision of an adoption committee he or she must decide within 7 calendar days after the decision of the adoption committee. In calculating this time period, the first day of the 7 days is the day after the date of the committee. After deciding to review the committee decision, the Assistant Director or Assistant Director's designee shall give notice to the child's worker, with copies to the supervisor, the Child Welfare program manager, adoption workers, and committee chair.

(3) Scope of Review. The scope of the review when requested by someone other than the Assistant Director of CAF is limited to the selection process and the decisions made by the adoption committee.

(4) Who may request a review under this rule:

(a) The child's caseworker;

(b) The child;

(c) The child's attorney;

(d) The Court Appointed Special Advocate (CASA) for the child;

(e) A relative who was considered by but not selected at an Adoption Committee per subsections (6)(b) or (c) of this rule;

(f) A current caretaker who was considered but not selected at an adoption committee per subsections (6)(b), (c), (d), or (e) of this rule; or

(g) An individual who was considered but not selected by an Adoption Committee and who alleges that placement of the child was denied or delayed because of the geographic location of the individual.

(5) Who may not request a review under this rule:

(a) A general applicant who is considered but not selected by an adoption committee; and

(b) Any person other than those listed in section (4) of this rule.

(6) Cases on which a review may be requested:

(a) The worker requests a review based on the worker's assessment that placement in the selected home will not meet the individual needs of the child;

(b) The adoption committee's choice was between a relative and an unrelated current caretaker as defined in Child Welfare Policy I-G.1.1, "Current Caretaker Adoption Planning", OAR 413-120-0500 to 413-120-0540;

(c) The adoption committee's choice was between two non-current caretaker relatives;

(d) The adoption committee's choice was between a current caretaker and a general applicant; or

(e) The adoption committee considered the current caretaker alone but did not select the current caretaker.

(7) If an adoption committee reaches a decision with which the child's worker does not agree, the child's worker shall staff the case with his or her supervisor and the Child Welfare program manager or designee. The child's worker, with the approval of the supervisor and the Child Welfare program manager or designee, is the only Department staff person who may request a review. If the Child Welfare program manager or designee agrees that further review should occur, she or he shall request a review of the decision by the Assistant Director of CAF or the Assistant Director's designee.

(8) Time Lines. A child's caseworker or person eligible under subsections (4)(a) to (4)(f) of this rule who wishes to request a review of an adoption committee's decision must submit the request to the Adoption Services Unit Manager or designee. In order for the request to be considered, the Adoption Services Unit Manager or designee must receive the request within 7 calendar days after the decision of an adoption committee. In calculating this time period, the first day of the 7 days is the day after the date of the committee.

(9) Decision and Notice of Intent to Review. If the Assistant Director of CAF receives a request for a review, the Assistant Director or the Assistant Director's designee must decide whether to review the decision of the committee within 7 calendar days after the full time line allowed in section (8) of this rule for the Adoption Services Manager's receipt of the request. After deciding whether to review or not to review the committee decision, the Assistant Director shall give notice to the requestor, with copies to the child's worker, supervisor, Child Welfare program manager, or their designees, other adoption workers, and committee chair.

(10) Assistant Director's Actions. If the Assistant Director of CAF or the Assistant Director's designee gives Notice of Intent to Review, then the Assistant Director or the Assistant Director's designee may:

(a) Remand the decision to a current caretaker, adoption relative placement, or other committee which may be but is not limited to the committee which participated in making the permanency decision on behalf of the child, with instructions to gather or review information or consider additional issues, and to issue a new decision;

(b) Conduct a review of all relevant files and information, and issue a decision affirming or changing the committee's decision, and where appropriate, directing a legal risk placement or adoptive placement; or

(c) Appoint someone to conduct a review of all relevant files and information, and make a recommendation to the Assistant Director or the Assistant Director's designee to affirm or change the committee's decision and where appropriate, recommend a legal risk placement or adoptive placement.

(11) Assistant Director's Decision is Final. The decision upon review by the Assistant Director of CAF or the Assistant Director's designee made as a result of the review is final, and does not qualify for a contested case hearing.

(12) Notwithstanding sections (1) through (11) of this rule, if the time to request review of a decision under sections (1) to (11) has expired pursuant to this rule and there is no request for review pending pursuant to those sections, and the deadline set by statute for a person entitled to seek judicial review of an agency decision entered under sections (1) through (11) has not expired, then the Assistant Director may withdraw and reconsider the decision.

(a) The Assistant Director may conduct a review of all relevant files and information, and issue a decision affirming or changing the decision, and where appropriate, directing a legal risk placement or adoptive placement; or

(b) The Assistant Director may appoint a person to conduct a review of all relevant files and information, and make a recommendation to the Assistant Director to affirm or change the decision and where appropriate, recommend a legal risk placement or adoptive placement. After receiving the recommendation(s), the Assistant Director may issue a decision affirming or changing the decision, and where appropriate, directing a legal risk placement or adoptive placement.

(c) The Assistant Director's decision issued pursuant to subsection (a) or (b) of this section does not qualify for a contested case hearing.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.280 - 418.285
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 23-2007(Temp), f. & cert. ef. 12-12-07 thru 6-9-08; CWP 4-2008, f. 5-30-08, cert. ef. 6-1-08

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

Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.
Adm. Order No.: SSP 13-2008(Temp)
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 6-1-08 thru 6-30-08
Notice Publication Date:
Rules Amended: 461-135-1100, 461-135-1102
Rules Suspended: 461-135-1102(T)
Subject: 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 6-month uninsurance requirement for OHP Standard. 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 6-month uninsurance requirement if the person's private health insurance premium was subsidized by FHIAP.

OAR 461-125-1102 about the effective dates for the Oregon Health Plan (OHP-OPU) is being amended to restate the Department's policy on 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.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1100
Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, the term private major medical health insurance refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than $10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and must not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) Must not be covered by private major medical health insurance and must not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461-135-1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP or OHP-OP6;

(b) Meet 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

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) When notified their FHIAP subsidy would end effective May 31, 2008, FHIAP recipients who notify FHIAP by that date of their choice to move to OHP Standard 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 or 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(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08

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

Rule Caption: Delinquency Clarification in Hospital Provider Tax Program.
Adm. Order No.: DMAP 13-2008(Temp)
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 6-12-08 thru 12-8-08
Notice Publication Date:
Rules Amended: 410-050-0750
Subject: This rule is being amended to correct a typographical error from the first filing and to clarify what constitutes a delinquency in the hospital provider tax program.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

410-050-0750
Reporting Total Net Revenue, Use of Estimated Revenue for Quarterly Reports

(1) A hospital must submit quarterly reports and quarterly payments for the calendar quarters for which a tax is due consistent with sections (2) and (5) of this rule, and must submit a fiscal year reconciliation report that includes a reconciliation statement, audited financial statement, and any fiscal year reconciliation tax payment based on the hospital's declared fiscal year end consistent with sections (3) and (5) of this rule.

(2) The quarterly reports and quarterly tax payments must be based on estimated net revenue, which will be referred to as estimated tax. Estimated tax is the amount of tax the hospital expects to owe for the current taxable calendar quarter. The hospital must calculate the estimated tax based on net revenues using the hospital's interim financial results for the quarter for which the tax is due. An estimated quarterly report is due for each calendar quarter for which a tax is due, based on the rate of tax applicable to that quarter. The quarterly payment is due and must be paid at the same time required for filing the quarterly report.

(3) The fiscal year reconciliation report and fiscal year reconciliation tax payment must be based on the amount of tax the hospital actually owes based on annual net revenue for all calendar quarters for which an estimated tax payment is due during the hospital's declared fiscal year. The hospital must calculate the annual net revenue for the hospital's declared fiscal year. The fiscal year reconciliation tax payment due to the Department will be the calculated tax (using the tax rate applicable to the appropriate quarter, described in subsection (c) below for fiscal year reconciliation tax calculation purposes) on the annual net revenue reduced by the estimated tax payments made for each taxable quarter of the hospital's declared fiscal year. The hospital must provide all information required in the fiscal year reconciliation report when due, even if no fiscal year reconciliation tax payment is owed.

(a) When the fiscal year reconciliation report is submitted, it must be accompanied by the hospital's declared fiscal year end audited financial statement for the declared fiscal year on which the fiscal year reconciliation report and fiscal year reconciliation tax payments are based.

(b) The fiscal year reconciliation report must include a reconciliation statement describing the relationship between the audited financial statement and annual net revenues subject to the tax. The reconciliation statement may be descriptive in form and should be consistent with the accounting principles used in the audited financial statement.

(c) The tax rate applicable to the final tax shall be calculated as follows:

(A) If all taxable quarters were subject to the same tax rate established in OAR 410-050-0160 and 410-050-0861, then the tax rate applicable to the final reconciliation is the tax rate applicable to all such quarters. For example, if the hospital's declared fiscal year is July 1, 2004 to June 30, 2005, then the tax rate is .93 percent of annual net revenue.

(B) If different tax rates apply to calendar quarters in the hospital's declared fiscal year, the hospital shall apply a blended rate to the total annual net revenue to determine the fiscal year reconciliation tax due. A blended rate is the average of the rates applicable to all taxable quarters. The Department will notify the hospital of the amount of the applicable blended rate. For example, if the hospital's declared fiscal year overlaps two quarters taxed at a rate of .93 percent and two quarters taxed at .50 percent, then the blended rate for purposes of the annual reconciliation is .715 percent. For purposes of calculating the fiscal year reconciliation tax due, the hospital will multiply the annual net revenue by the blended rate.

(d) If the total estimated tax payments already paid by the hospital for the declared fiscal year exceed the amount of the fiscal year reconciliation tax actually due, the fiscal year reconciliation report should identify such difference and the hospital should adjust the fiscal year reconciliation tax due amount accordingly in the fiscal year reconciliation report for that tax year.

(e) The fiscal year reconciliation report, audited financial statement, and reconciliation statement will be due and will be submitted to the Department no later than the final day of the sixth calendar month after the hospital's declared fiscal year end. The fiscal year reconciliation tax payment (if owed) is due and must be paid at the same time required for filing the fiscal year reconciliation report. Failure to file or pay when due will be a delinquency.

(f) If the declared fiscal year end audited financial statement for the hospital is not available within the time required in section (e), a fiscal year reconciliation tax payment (if owed) and fiscal year reconciliation report are still required to be submitted within the time period specified under section (e). The hospital may use interim financial statements to determine the amount of the fiscal year reconciliation tax due and may submit a justification statement with the fiscal year reconciliation report due no later than the date specified in section (e) signed by the chief financial officer of the hospital informing the Department when the audited financial statement is due and certifying that an amended fiscal year reconciliation report, including the reconciliation statement, must be provided to the Department within 30 days of the hospital's receipt of the audited financial statement. Reports and payments made after the time period required in section (e) must be submitted in compliance with OAR 401-050-0760.

(g) In the event the hospital does not receive audited financial statements, internal financial statements signed by the hospital's chief financial officer must be submitted where these rules otherwise require audited financial statements.

(h) If the effective date of the tax is not at the start of the hospital's declared fiscal year, then the annual net revenue for the first fiscal year reconciliation report will be calculated based on the number of quarters subject to the tax versus the total number of quarters in the hospital's declared fiscal year. For example, if the tax is effective on July 1, 2004 for a hospital with a declared fiscal year ending December 31, 2004, the annual net revenues would be calculated as follows: total net revenues for the declared fiscal year divided by two (two of four quarters subject to the tax).

(4) The Department will not find a payment deficiency for estimated quarterly taxes as long as the hospital paid the estimated taxes and submitted the quarterly report no later than the quarterly due date and such estimated tax amount was not less than the equivalent of the tax payment that

would have been determined based on the hospital's annual net revenue for its most recent prior declared fiscal year divided by four and multiplied times the tax rate for the quarter in which the actual estimated tax is due. Annual net revenue for purposes of section (4) of this rule means the twelve month period in which the hospital's most recent prior declared fiscal year occurred, regardless of whether the prior quarters were subject to a tax. For example, if the annual net revenue for the most recent prior declared fiscal year was $4 million; divide that total by 4 ($1 million) and multiply the product times the current tax rate for the taxable quarter (.93 percent). In this example, the estimated quarterly tax payment may not be less than $9,300 in order to receive the benefit of section (4) of this rule.

(a) If the hospital seeks to use the process in section (4) of this rule, no later than the date on which the first quarterly estimated tax and report is due (for example, December 13, 2004, for the first taxable quarter), the hospital must provide the Department with a copy of the hospital's audited financial statement for the hospital's most recent prior declared fiscal year and identify the hospital's annual net revenue amount for that declared fiscal year, regardless of whether any taxes were due for that year.

(b) In the event the hospital does not receive audited financial statements, internal financial statements from the hospital's most recent prior declared fiscal year signed by the chief financial officer may be used for this purpose.

(5) All of the due dates for filing reports or paying taxes are established in OAR 410-050-0740, unless the Department permits a later payment date. If a hospital requests an extension, the Department, in its sole discretion, will determine whether to grant an extension. There will be a delinquency for each quarter the hospital fails to pay the estimated tax or file the quarterly report when due. There will be a delinquency if the hospital fails to pay the fiscal year reconciliation tax or file the fiscal year reconciliation report, including financial statements and reconciliation statement, when due.

(6) A hospital must declare the date of the hospital's declared fiscal year end for purposes of establishing final tax reporting requirements under this rule. The declaration must be filed with the Department no later than December 13, 2004, or the first date that an estimated quarterly report and tax is due. The hospital must notify the Department within 30 days of a change to the hospital's declared fiscal year end. Such a change in declared fiscal year end will be applied to the hospital's next future declared fiscal year for purposes of calculating the final tax and filing the final report.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 2
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 13-2008(Temp), f. & cert. ef. 6-12-08 thru 12-8-08

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Rule Caption: Prenatal coverage for CAWEM women pilot in Multnomah and Deschutes Counties under SCHIP program.
Adm. Order No.: DMAP 14-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-120-0030
Rules Repealed: 410-120-0030(T)
Subject: The General Rules program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to clients. Having temporarily adopted 410-120-0030, DMAP suspends the temporary rule and permanently adopts the rule to implement a pilot project in participating counties, presently Multnomah County and Deschutes County, providing prenatal care during pregnancy and labor and delivery services for CAWEM women. This pilot will be operated under an amendment to Oregon's State Children's Health Insurance Program (SCHIP) plan. Oregon received federal approval for the pilot project, effective April 1, 2008.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0030
Children's Health Insurance Program (SCHIP)

(1) The Children's Health Insurance Program (SCHIP) is a federal non-entitlement program for children under 19 years of age that provides health coverage for uninsured, low-income children who are ineligible for Medicaid and meet the SCHIP eligibility requirements. The SCHIP program is administered by the Department of Human Services (DHS) in accordance with the Oregon Health Plan waiver and the SCHIP state plan. The General Rules (OAR 410-120-0000 et. seq.) and Oregon Health Plan Rules (OAR 410-141-0000 et. seq.) applicable to the Medicaid program are also applicable to the DHS SCHIP program.

(2) Eligibility criteria, including but not limited to income methodologies and citizenship requirements for medical assistance applicable to children under the age of 19 years, are established in OAR Chapter 461 through the program acronym OHP-CHP.

(3) Benefit package of covered services: Children determined eligible for SCHIP receive the same OHP Plus benefits as covered under Medicaid categorically needy program. (For benefits refer to 410-120-1210).

(4) SCHIP Pilot project — Prenatal coverage for CAWEM under SCHIP:

(a) Notwithstanding subsections (2) and (3) of this rule, CAWEM pregnant women residing in Multnomah County or Deschutes County during pregnancy who participate in the SCHIP pilot project will receive expanded medical services (OHP Plus benefit package, as limited under subsection (d) of this subsection) to provide prenatal care for the unborn child and labor and delivery services through this pilot program;

(b) This population is exempt from managed care enrollment. The preferred service delivery system will be Primary Care Management (PCM). Fee-For-Service (FFS) enrollment will be available by exception for continuity of care or other DHS-approved reasons that could justify disenrollment from a PCM under OAR 410-141-0085;

(c) Pilot project services continue through labor and delivery. The day after pregnancy ends, eligibility for medical services is based on eligibility categories established in OAR chapter 461;

(d) The following services are not covered for the pilot project:

(i) Postpartum care beyond the global payment;

(ii) Sterilization;

(iii) Abortion;

(iv) Death with dignity services;

(v) Hospice.

Stat. Auth.: ORS 409.010, 409.110, 409.050
Stats. Implemented: ORS 414.065
Hist.: DMAP 7-2008(Temp), f. 3-17-08 & cert. ef. 4-1-08 thru 9-15-08; DMAP 14-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: July 2008—Telephone call reimbursement (coverage may be limited).
Adm. Order No.: DMAP 15-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-120-1200
Subject: The General Rules program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to clients. DMAP revised OAR 410-120-1200 to show that the policy regarding telephone calls has not changed but the text will more clearly reflect that telephone calls may be reimbursed (coverage may be limited), as described in program specific rules. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1200
Excluded Services and Limitations

(1) Certain services or items are not covered under any program or for any group of eligible Clients. If the Client accepts financial responsibility for a Non-Covered Service, payment is a matter between the Provider and the Client subject to the requirements of OAR 410-120-1280.

(2) The Division of Medical Assistance Programs (DMAP) will make no payment for any expense incurred for any of the following services or items that are:

(a) Not expected to significantly improve the basic health status of the Client as determined by DMAP staff, or its contracted entities, for example, the DMAP Medical Director, medical consultants, dental consultants or Quality Improvement Organizations (QIO);

(b) Not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury;

(c) Determined not medically or dentally appropriate by DMAP staff or authorized representatives, including Acumentra or any contracted Utilization Review organization;

(d) Not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his or her scope of practice or licensure;

(e) For routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the Client. Examples include exams for employment or insurance purposes;

(f) Provided by friends or relatives of eligible Clients or members of his or her household, except when the friend, relative or household member:

(A) Is a health professional, acting in a professional capacity; or

(B) Is directly employed by the Client under the Department of Human Services (DHS) Seniors and People with Disabilities Division (SPD) Home and Community Based Waiver or the SPD administrative rules, OAR 411-034-000 through 411-034-0090, governing Personal Care Services covered by the State Plan; or

(C) Is directly employed by the Client under the Children, Adults and Families Division (CAF) administrative rules, OAR 413-090-0100 through 413-090-0220, for services to children in the care and custody of the Department who have special needs inconsistent with their ages. A family member of a minor Client (under the age of 18) must not be legally responsible for the Client in order to be a Provider of personal care services;

(g) For services or items provided to a Client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under DMAP administrative rules;

(h) Needed for purchase, repair or replacement of materials or equipment caused by adverse actions of Clients to personally owned goods or equipment or to items or equipment that DMAP rented or purchased;

(i) Related to a non-covered service; some exceptions are identified in the individual Provider rules. If DMAP determines the provision of a service related to a non-covered service is cost-effective, the related medical service may, at the discretion of DMAP and with DMAP Prior Authorization (PA), be covered;

(j) Considered experimental or investigational, including clinical trials and demonstration projects, or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy;

(k) Identified in the appropriate program rules including the Hospital rules, Revenue Codes Section, as Non- Covered Services.

(l) Requested by or for a Client whom DMAP has determined to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services;

(m) For copying or preparing records or documents that except those Administrative Medical Reports requested by the branch offices or DMAP for casework planning or eligibility determinations;

(n) Whose primary intent is to improve appearances;

(o) Similar or identical to services or items that will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the Client will be essentially the same;

(p) For the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence,

(q) Items or services which are for the convenience of the Client and are not medically or dentally appropriate;

(r) The collection, processing and storage of autologous blood or blood from selected donors unless a Physician certifies that the use of autologous blood or blood from a selected donor is Medically Appropriate and surgery is scheduled;

(s) Educational or training classes that are not Medically Appropriate (Lamaze classes, for example);

(t) Outpatient social services except Maternity Case Management services and other social services described as covered in the individual Provider rules;

(u) Plasma infusions for treatment of Multiple Sclerosis;

(v) Post-mortem exams or burial costs, or other services subsequent to the death of a Client;

(w) Radial keratotomies;

(x) Recreational therapy;

(y) Telephone calls covered only as specified for:

(A) Tobacco cessation counseling, as described in OAR 410-130-0190;

(B) Maternity Case Management as described in OAR 410-130-0595;

(C) Telemedicine as described in OAR 410-130-0610; and

(D) Services specifically identified as allowable for telephonic delivery when appropriate in the Mental Health and Chemical Dependency procedure code and reimbursement rates published by the DHS Addiction and Mental Health Division;

(z) Transsexual surgery or any related services or items;

(aa) Weight loss programs, including, but not limited to Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss;

(bb) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered;

(cc) Immunizations prescribed for foreign travel;

(dd) Services that are requested or ordered but not provided (i.e., an appointment which the Client fails to keep or an item of equipment which has not been provided to the Client);

(ee) DUII-related services already covered by the Intoxicated Driver Program Fund as directed by ORS 813.270(1) and (5);

(ff) Transportation to meet a Client's personal choice of a Provider;

(gg) Pain center evaluation and treatment;

(hh) Alcoholics Anonymous (AA) and other self help programs;

(ii) Medicare Part D covered prescription drugs or classes of drugs, and any cost sharing for those drugs, for Medicare-Medicaid Fully Dual Eligible Clients, even if the Fully Dual Eligible Client is not enrolled in a Medicare Part D plan. See OAR 410-120-1210 for Benefit Package.

Stat. Auth.: ORS 409.010, 409.110, 409.065 & 409.050

Stats. Implemented: ORS 414.065, 414.025

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 15-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: Clarify Pharmaceutical Services rules, semi-annual update Practitioner Managed Prescription Drug Plan list.
Adm. Order No.: DMAP 16-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-121-0021, 410-121-0030, 410-121-0032, 410-121-0040, 410-121-0157
Subject: The Pharmaceutical Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended as follows: 410-121-0021: to correct an ORS citation; 410-121-0030: by adding certain drugs to the PMPDP PDL; 410-121-0032: to update a suspension related to MMIS transition in the Supplemental Rebates; 410-121-0040: to clarify that DMAP may require prior authorization for low cost prescriptions; and 410-121-0157: to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #144, dated December 15, 2006, Release #145, dated March 7, 2007, Release #146 dated, June 26, 2007, Release #147, dated August 15, 2007 and Release # 148 dated, January 28, 2008. These revisions are retroactive to the dates specified in the rule. Text in all rules listed

is revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0021
Organizations Authorized to Provide Pharmaceutical Prescription Services

(1) Pharmacies, and Medicare certified independent rural health clinics providing urgent medical services for clients as defined in ORS 414.325(7) may provide drug prescription services for fee-for-service Division of Medical Assistance Programs (DMAP) clients and receive reimbursement from DMAP by complying with all the following requirements:

(a) Comply with all applicable Federal and State statutes, regulations and rules;

(b) Meet all current licensing and regulatory requirements;

(c) Be enrolled as a pharmacy provider with DMAP;

(d) Pharmacies must have a current National Association of the Board of Pharmacy (NABP) number to bill DMAP;

(e) Medicare certified independent rural health clinics must have a pharmacist, physician, or nurse practitioner, licensed to dispense and bill drug prescriptions; and

(f) Comply with DMAP pharmacy billing requirements.

(2) Refer to OAR 410-120-1260 for enrollment details.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 41-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08

410-121-0030
Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that DHS determines to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduce the cost of their drug below that of the benchmark drug for the class, DHS will include their drug in the PDL;

(e) A copy of the current PDL is available on the web at www.dhs.state.or.us/policy/healthplan/guides/pharmacy/.

(3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. DHS will determine relative price using the methodology described in subsection (4);

(c) DHS will review drug classes and selected drug(s) for the drug classes periodically:

(A) Review will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes a review advisable;

(B) DHS will not add new drugs to the PDL until they have been reviewed by the HRC;

(C) DHS will make all changes or revisions to the PDL, using the rulemaking process and will publish the changes on DHS's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. DHS will weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the benchmark drug based on (4)(b) and on the Estimated Acquisition Cost (EAC) on the first of the month (OAR 410-121-0155) in which DHS reviews that specific drug class;

(d) Once the cost of the benchmark drug is determined, DHS will recalculate the cost of the other FDA-approved drugs in the class using the EAC in effect for retail pharmacies on the first of the month in which DHS reviews that specific drug class less average available rebate. DHS will include drugs with prices under the benchmark drug cost on the PDL.

(5) Regardless of the PDL, pharmacy providers shall dispense prescriptions in the generic form, unless the practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155. Table 121-0030-1, PMPDP PDL.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: 409.050
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08

410-121-0032
Supplemental Rebate Agreements

(1) Supplemental Rebate Agreements are negotiated for specific drug products between the Division of Medical Assistance Programs (DMAP) and pharmaceutical manufacturers. Manufacturers may submit Supplemental Rebate offers for consideration to include their drug(s) on the Practitioner's-Managed Prescription Drug Plan (PMPDP) Plan Drug List (PDL), OAR 410-121-0030:

(a) Manufacturers must submit Supplemental Rebate Agreements on the agreement template approved by the Centers for Medicare and Medicaid Services (CMS). This template is available on the Department of Human Services Web site;

(b) "Supplemental Rebates" are DMAP and CMS approved discounts paid by manufacturers per unit of drug. These rebates are authorized by the Social Security Act section 42 USC 1396r-8(a)(1) and are in addition to federal rebates mandated by the Omnibus Budget Rehabilitation Act (OBRA 90) and the federal rebate program;

(c) "Net Price" is the ingredient reimbursement amount minus the CMS Basic Rebate and CMS Consumer Price Index (CPI) Rebate minus the Supplemental Rebate;

(d) "CMS Basic Rebate" is the quarterly payment by a manufacturer pursuant to the manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with the Social Security Act, section 1927(c)(3), 42 USC 1396r-8 (c)(1), and 42 USC1396r-8 (c)(3);

(e) "CMS CPI Rebate" is the quarterly payment by the manufacturer pursuant to the manufacturer's CMS Medicaid Drug Rebate Agreement, made in accordance with 42 USC 1396r-8 (c)

(2) Manufacturers may offer Supplemental Rebates by submitting the completed template to DMAP:

(a) Manufacturers may be allowed to submit Supplemental Rebate offers for drugs recommended for inclusion on the PDL by the Health Resources Commission;

(b) Drugs may be considered for addition to the appropriate PDL class when the Net Price is equal to or less than the benchmark drug estimated acquisition cost as determined in OAR 410-121-0030

(3) Manufacturers may submit a Supplemental Rebate Agreement offer by:

(a) Obtaining the CMS-approved template from the DHS website, and;

(b) Submitting the completed Supplemental Rebate Agreement with attachment B listing the drugs offered to DMAP. The manufacturers may

submit up to three separate attachment B drug lists with the Supplemental Rebate Agreement offer.

(4) Acceptance of the offer:

(a) DMAP may notify the manufacturer of the acceptance of the offer(s);

(b) Supplemental Agreements will be executed after signed by all parties, approved by CMS if required, and added to the PMPDP Plan Drug List by the Administrative rule process.

Stat. Auth.: 409.050
Stats. Implemented: ORS 414.065
Hist.: OMAP 97-2004, f. 12-30-04, cert. ef. 1-1-05; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08

410-121-0040
Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining Prior Authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by OHP in a manner consistent with the Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication will not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited.

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these Pharmacy Provider rules, including PA requirements imposed in this rule.

(3) The Department of Human Services (DHS) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs for which DHS requires PA for this purpose are listed in Table 410-121-0040-1, with their approval criteria.

(4) DHS may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Drug Use Review (DUR) Board and adopted by the Department in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which DHS requires PA for this purpose are included in Table 410-121-0040-2, with their approval criteria.

(5) PA is required for brand name drugs that have two or more generically equivalent products available. Criteria for approval are:

(a) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria.

(b) If (5)(a) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(6) PA may not be required

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by DHS or,

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP.

(7) Psychotropic prescriptions for children under the age of six cannot be processed when a default 999999 provider number has been entered. If such a default provider number is used, the drug may not be dispensed until PA has been obtained. The PA process will include providing the correct provider number.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08

410-121-0157
Participation in the Medicaid Drug Rebate Program

The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Division of Medical Assistance Programs (DMAP) on all their drug products. DMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Documents in rule by reference: Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. DMAP receives this information from CMS in the form of numbered and dated Releases. Subsequently, DMAP produces and updates Master Pharmaceutical Manufacturer's Rebate Lists (Lists), alphabetical and numeric, by manufacturer. These lists are used by DMAP providers to bill for services. DMAP includes in rule by reference, the following CMS Releases and subsequent DMAP Master Pharmaceutical Manufacturer's Rebate Lists: Release # 141, dated May 4, 2006; Release # 142, dated July 3, 2006, and Lists updated July 12, 2006; Release # 143, dated August 23, 2006, and Lists updated August 29, 2006; Release #144, dated December 15, 2006; Release #145, dated March 7, 2007; Release #146, dated June 26, 2007; Release #147, dated August 15, 2007; Release #148, dated January 28, 2008; and Release #149, dated May 6, 2008. All CMS Releases are available on the Department of Human Services' website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html CMS Releases Drug Product Data and Drug Company Contact information are available at: www.cms.hhs.gov/MedicaidDrugRebateProgram/02_StateReleases.asp

(3) Retroactive effective dates: The CMS Medicaid Drug Rebate Program experiences frequent changes in participation and often this information is submitted to DMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(4) DMAP contracts with a Pharmacy Benefit Manager (PBM) to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with the PBM within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(5) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993 (Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp) f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp) f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp) f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp) f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04;

OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05; OMAP 30-2005, f. & cert. ef. 6-6-05; OMAP 55-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 5-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 7-2006(Temp), f. 3-29-06, cert. ef. 4-1-06 thru 9-15-06; OMAP 12-2006, f. 5-26-06, cert. ef. 6-1-06; OMAP 49-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: July 2008 rule revisions.
Adm. Order No.: DMAP 17-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-0818
Rules Adopted: 410-122-0658
Rules Amended: 410-122-0020, 410-122-0080, 410-122-0184, 410-122-0186, 410-122-0202, 410-122-0250, 410-122-0300, 410-122-0320, 410-122-0325, 410-122-0365, 410-122-0400, 410-122-0475, 410-122-0500, 410-122-0520, 410-122-0540, 410-122-0660, 410-122-0720
Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to clients. DMAP adopted a new rule (410-122-0658) to establish conditions of coverage for Gradient Compression Stockings.

DMAP amended rules as follows:

410-122-0020, Orders: Adds inclusion criteria for orders by a nurse practitioner.

410-122-0080, Conditions of Coverage, Limitations, Restrictions and Exclusions: Clarifies that DMEPOS providers cannot bill for medical supplies separately while a client is under a home health plan of care and covered home health services.

410-122-0184, Repairs, Maintenance, Replacement and Delivery: Clarifies conditions of coverage for maintenance. Coverage is consistent with the Deficit Reduction Act (DRA) of 2005.

410-122-0186, Payment Methodology: For codes A4649 and E1399, increases the amount that may be billed without prior authorization from $50.00 to $150.00. Allows code K0108 to be billed without prior authorization when $150.00 or less.

410-122-0202, Continuous Positive Airway Pressure (CPAP) System: Rewrites the rule, revises conditions of coverage for adults and adds inclusion criteria for children.

410-122-0250, Breast Pumps: Adds conditions of coverage for purchase of a breast pump.

410-122-0300, Light Therapy: Adds bilirubin lab values for phototherapy.

410-122-0320, Manual Wheelchair Base: Removes reference to the Functional Mobility Evaluation form (DMAP 3125).

410-122-0325, Motorized/Power Wheelchair Base: Corrects coverage criteria for a Group 3 power wheelchair with single or multiple power options. Corrects codes that are covered and codes that are not covered. Adds table of codes to the rule. Adds that equipment must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Supplier (ATS) or Assistive Technology Practitioner (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client.

410-122-0365, Standing and Positioning Aids: Corrects formatting problem with the table.

410-122-0400, Pressure Reducing Support Surfaces: Makes codification corrections and clarifies documentation requirements for a completely immobile client requiring a Group 1 surface.

410-122-0475, Therapeutic Shoes for Diabetics: Removes deleted codes and adds replacement codes for multiple density inserts.

410-122-0500, Transcutaneous Electrical Nerve Stimulator (TENS): Makes codification corrections only.

410-122-0520, Glucose Monitors and Diabetic Supplies: Adds inclusion criteria for clients with gestational diabetes and children. Clarifies exclusions of coverage.

410-122-0540, Ostomy Supplies: Colostomy, Illeostomy, Ureterostomy: Clarifies documentation requirements when a provider bills for a greater quantity of supplies than generally allowed in rule.

410-122-0660, Orthotics and Prosthetics: Adds documentation requirements, corrects codes requiring prior authorization and corrects codes excluded from coverage.

410-122-0720, Pediatric Wheelchairs: Removes reference to the Functional Mobility Evaluation form (DMAP 3125). Adds that power mobility devices and related options and accessories must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Supplier (ATS) or Assistive Technology Practitioner (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client.

Text is revised to improve readability and take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0020
Orders

(1) The purchase, rental or modifications of durable medical equipment, and the purchase of supplies must have an order prior to dispensing items to a client.

(2) For any durable medical equipment, prosthetics, orthotics and supplies (DMEPOS), a provider must have a written order signed and dated by the treating practitioner prior to submitting a claim to the Division of Medical Assistance Programs (DMAP).

(3) A provider may dispense some items based on a verbal order from the treating practitioner, except those items requiring a written order prior to delivery (see below) or as specified in a particular rule:

(a) A provider must maintain documentation of the verbal order and this documentation must be available to DMAP upon request;

(b) The verbal order must include all the following elements:

(A) Client's name; and,

(B) Name of the practitioner; and,

(C) Description of the item; and,

(D) Start date of the order; and,

(E) Primary ICD-9 diagnosis code for the equipment/supplies requested.

(c) For items that are dispensed based on a verbal order, the provider must obtain a written order that meets the requirements outlined below for written orders.

(4) For an item requiring a written order prior to delivery, Medicare criteria must be met.

(5) When specified in rule, a nurse practitioner may provide the dispensing order and sign the detailed written order only when the following are met:

(a) They are treating the client for the condition for which the item is needed; and

(b) They are practicing independently of a physician.

(6) The DMEPOS provider must have on file a written order, information from the treating practitioner concerning the client's diagnosis and medical condition, and any additional information required in a specific rule.

(7) DMAP accepts any of the following forms of orders and Certificates of Medical Necessity (CMN): a photocopy, facsimile image, electronically maintained or original "pen and ink" document.

(a) An electronically maintained document is one which has been created, modified, and stored via electronic means such as commercially available software packages and servers;

(b) It is the provider's responsibility to ensure the authenticity/validity of a facsimile image, electronically maintained or photocopied order;

(c) A provider must also ensure the security and integrity of all electronically maintained orders and/or certificates of medical necessity;

(d) The written order may serve as the order to dispense the item if the written order is obtained before the item is dispensed;

(8) A written order must be legible and contain the following elements:

(a) Client's name; and,

(b) Detailed description of the item that can either be a narrative description (e.g., lightweight wheelchair base) or a brand name/model number including medically appropriate options or additional features; and,

(c) The detailed description of the item may be completed by someone other than the practitioner. However, the treating practitioner must review the detailed description and personally indicate agreement by his signature and the date that the order is signed;

(A) DMAP requires practitioners to sign for services they order;

(B) This signature may be handwritten, electronic, or stamped, and it must be in the client's medical record;

(C) The ordering practitioner is responsible for the authenticity of the signature;

(D) If a practitioner allows a signature stamp, the provider performing the service must retain a signed statement in their records that this practitioner is the only person who has and uses the stamp;

(d) Primary ICD-9 diagnosis code for the equipment/supplies requested;

(9) When a DMEPOS provider submits a Centers for Medicare & Medicaid Services (CMS) CMN to DMAP as documentation, the following is required:

(a) The corresponding instructions for completing the specific CMN form must be followed; and

(b) Section B on the CMN cannot be completed by the DMEPOS provider;

(10) A provider is responsible to obtain as much documentation from the client's medical record as necessary for assurance that DMAP coverage criteria for an item(s) is met.

(11) Certain items require one or more of the following additional elements in the written order:

(a) For accessories or supplies that will be provided on a periodic basis:

(A) Quantity used;

(B) Specific frequency of change or use – "as needed" or "prn" orders are not acceptable;

(C) Number of units;

(D) Length of need: Example: An order for surgical dressings might specify one 4" x 4" hydrocolloid dressing which is changed one to two times per week for one month or until the ulcer heals;

(b) For orthoses: If a custom-fabricated orthosis is ordered by the practitioner, this must be clearly indicated on the written order;

(c) Length of need:

(A) If the coverage criteria in a rule specifies length of need; or,

(B) If the order is for a rental item;

(d) Any other medical documentation required by rule.

(12) For repairs: Labor for repairs, parts for DME repairs and replacement parts for DME (e.g., batteries) do not require a written order.

(13) A new order is required:

(a) When required by Medicare (for a Medicare covered service) (www.cignamedicare.com); or,

(b) When there is a change in the original order for an item; or,

(c) When an item is permanently replaced; or,

(d) When indicated by the treating practitioner;

(A) A new order is required when an item is being replaced because the item is worn or the client's condition has changed; and,

(B) The provider's records should also include client-specific information regarding the need for the replacement item; and,

(C) This information should be maintained in the provider's files and be available to DMAP on request; and,

(D) A new order is required before replacing lost, stolen or irreparably damaged items to reaffirm the medical appropriateness of the item;

(e) When there is a change of DMEPOS provider: In cases where two or more providers merge, the resultant provider should make all reasonable attempts to secure copies of all active CMN's and written orders from the provider(s) purchased. This document should be kept on file by the resultant provider for future presentation to DMAP, if requested;

(f) On a regular or specific basis (even if there is no change in the order) only if it is so specified in a particular rule.

(14) A provider is required to maintain and provide (when required by a particular rule) legible copies of facsimile image and electronic transmissions of orders.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 41-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 in the North Salem, Woodburn, McMinnville, Lebanon, Albany and Corvallis branch offices, ef. 6-30-82 in the balance of the state; AFS 20-1983, f. 5-5-83, ef. 6-1-83; AFS 49-1987, f. 10-16-87, ef. 11-1-87; AFS 48-1989, f. & cert. ef. 8-24-89; HR 13-1991, f. & cert. ef. 3-1-91, Renumbered from 461-024-0004; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 72-2002(Temp), f. & cert. ef. 12-24-02 thru 5-15-03; OMAP 36-2003, f. & cert. ef. 5-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0080

Conditions of Coverage, Limitations, Restrictions and Exclusions

(1) The Division of Medical Assistance Programs (DMAP) may pay for durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) when the item meets all the criteria in this rule, including all of the following conditions. The item:

(a) Has been approved for marketing by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented, and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of DMAP rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and

(i) Is included in the OHP Client's benefit package of covered services.

(2) Conditions for Medicare-Medicaid Services:

(a) When Medicare is the primary payer for a covered service and when DMAP DMEPOS coverage criteria differs from Medicare coverage criteria, DMAP DMEPOS coverage criteria are waived, except as provided in subsection (b) of this section, and only if the item is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and included in the OHP Client's benefit package of covered services;

(b) If Medicare is the primary payer and Medicare denies payment, an appeal to Medicare must be filed timely prior to submitting the claim to DMAP for payment. If Medicare denies payment based on failure to submit a timely appeal, DMAP may reduce any amount DMAP determines could have been paid by Medicare;

(c) If Medicare denies payment on appeal, DMAP will apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the Oregon Health Plan.

(3) DMAP will not cover DMEPOS items when the item or the use of the item is:

(a) Not primarily medical in nature;

(b) For personal comfort or convenience of client or caregiver;

(c) A self-help device;

(d) Not therapeutic or diagnostic in nature;

(e) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);

(f) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);

(g) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or

(h) Reimbursed as part of the all-inclusive rate in a nursing facility, or as part of a home and community based care waiver service, or by any other public, community or third party resource.

(4) In addition to the particular requirements in this rule, particular coverage criteria, limitations and restrictions for durable medical equipment, prosthetics, orthotics and supplies are specified in the appropriate rule. To the extent that codes are identified in these rules or in fee schedules, the codes are provided as a mechanism to facilitate payment for covered items and supplies consistent with OAR 410-122-0186, but codes do not determine coverage. If prior authorization is required, the request must document that prior authorization was obtained in compliance with the rules in this division.

(5) DMEPOS providers must have documentation on file that supports coverage criteria are met.

(6) Billing records must demonstrate that the provider has not exceeded any limitations and restrictions in rule. DMAP may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5) and (6) above must be made available to DMAP on request.

(8) To identify non-covered items at a code level, providers can refer to the DMAP fee schedule, subject to the limitation that fee schedules and codes do not determine coverage, and are solely provided as a mechanism to facilitate payment for covered services and supplies consistent with OAR 410-122-0186. If an item or supply is not covered for an OHP Client in accordance with these rules, there is no basis for payment regardless of whether there is a code for the item or supply on the fee schedule.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitute a buy-up and are prohibited. Refer to the DMAP General Rules (chapter 410 division 120) for specific language on buy-ups.

(11) Equipment purchased by DMAP for a client is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

(15) DMAP will not pay DMEPOS providers for medical supplies separately while a client is under a home health plan of care and covered home health care services.

(16) DMAP will not pay DMEPOS providers for medical supplies separately while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, DMAP or other carrier.

(17) The items listed in **Table 122-0080** generally do not meet the requirements under DMEPOS rules for purchase, rent or repair of equipment or items. A request for equipment or an item on this list will not be granted until all criteria in this rule are met.

(18) See General Rules, OAR 410-120-1200 Excluded Services and Limitations for more information on general scope of coverage and limitations.

(19) **Table 122-0080**

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 24-1990(Temp), f. & cert. ef. 7-27-90; HR 6-1991, f. & cert. ef. 1-18-91, Renumbered from 461-024-0020; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0184

Repairs, Maintenance, Replacement, Delivery and Dispensing

(1) Indications and Limitations of Coverage and/or Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover reasonable and necessary repairs, servicing, and replacement of medically appropriate, covered durable medical equipment, prosthetics and orthotics, including those items purchased or in use before the client enrolled with DMAP.

(a) Repairs:

(A) To repair means to fix or mend and to put the equipment back in good condition after damage or wear to make the equipment serviceable;

(B) If the expense for repairs exceeds the estimated expense of purchasing or renting another item of equipment for the remaining period of medical need, no payment will be made for the amount of the excess;

(C) Payment for repairs is not covered when:

(i) The skill of a technician is not required; or

(ii) The equipment has been previously denied; or

(iii) Equipment is being rented, including separately itemized charges for repair; or

(iv) Parts and labor are covered under a manufacturer's or supplier's warranty;

(D) Code E1340 must not be used on an initial claim for equipment. Payment for any labor involved in assembling, preparing, or modifying the equipment on an initial claim is included in the allowable rate;

(b) Servicing:

(A) Additional payment for routine periodic servicing, such as testing, cleaning, regulating, and checking of the client's equipment is not covered. However, more extensive servicing which, based on the manufacturers' recommendations, is to be performed by authorized technicians, may be covered for medically appropriate client-owned equipment. For example, this might include, breaking down sealed components and performing tests that require specialized testing equipment not available to the client;

(B) Payment for maintenance/service is not covered for rented equipment. DMAP may authorize payment for covered servicing of capped rental items after six months have passed from the end of the final paid rental month. Use the corresponding Healthcare Common Procedure Coding System (HCPCS) code for the equipment in need of servicing at no more than the rental fee schedule allowable amount;

(C) Up to one month's rental will be reimbursed at the level of either the equipment provided; or, the equipment being repaired, whichever is less costly;

(D) Maintenance and servicing that includes parts and labor covered under a manufacturer's or supplier's warranty is not covered;

(c) Replacement — Replacement refers to the provision of an identical or nearly identical item:

(A) Temporary Replacement: One month's rental of temporary replacement for client-owned equipment being repaired, any type (K0462) may be reimbursed when covered client-owned equipment such as a wheelchair is in need of repair. The equipment in need of repair must be unavailable for use for more than one day. For example, the repair takes more than one day or a part has to be ordered and the wheelchair is non-functional;

(B) Permanent Replacement: Situations involving the provision of a different item because of a change in medical condition must meet the specific coverage criteria identified in Chapter 410, Division 122;

(C) Equipment which the client owns or is a capped rental item may be replaced in cases of loss or irreparable damage. Irreparable damage refers to a specific accident or to a natural disaster (e.g., fire, flood, etc.). Irreparable wear refers to deterioration sustained from day-to-day usage over time and a specific event cannot be identified. Replacement of equipment due to irreparable wear takes into consideration the reasonable useful lifetime of the equipment;

(i) Reasonable useful lifetime of durable medical equipment (DME) is no less than five years;

(ii) Computation of the useful lifetime is based on when the equipment is delivered to the client, not the age of the equipment;

(iii) Replacement due to wear is not covered during the reasonable useful lifetime of the equipment;

(iv) During the reasonable useful lifetime, repair up to the cost of replacement (but not actual replacement for medically appropriate equipment owned by the client) may be covered;

(D) Cases suggesting malicious damage, culpable neglect, or wrongful disposition of equipment may not be covered;

(d) Delivery:

(A) Providers may deliver directly to the client or the designee (person authorized to sign and accept delivery of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) on behalf of the client);

(B) Providers, their employees, or anyone else having a financial interest in the delivery of an item are prohibited from signing and accepting an item on behalf of a client;

(C) A provider may deliver DMEPOS to a client in a hospital or nursing facility for the purpose of fitting or training the client in its proper use. This may be done up to two days prior to the client's anticipated discharge to home. On the claim bill the date of service as the date of discharge and specify the place of service (POS) as the client's home. The item must be for subsequent use in the client's home;

(D) A provider may deliver DMEPOS to a client's home in anticipation of a discharge from a hospital or nursing facility. The provider may arrange for actual delivery approximately two days prior to the client's anticipated discharge to home. On the claim bill the date of service as the date of discharge and specify the POS as the client's home;

(E) No payment is made on dates of service the client receives training or fitting in the hospital or nursing facility for a particular DMEPOS item;

(e) For Dispensing Refills:

(A) For DMEPOS products that are supplied as refills to the original order, providers must contact the client or designee prior to dispensing the refill to check the quantity on hand and continued need for the product;

(B) Contact with the client or designee regarding refills may only take place no sooner than approximately seven days prior to the delivery/shipping date;

(C) For subsequent deliveries of refills, the provider may deliver the DMEPOS product no sooner than approximately fifteen days prior to the end of usage for the current product. This is regardless of which delivery method is utilized. DMAP will allow for the processing of claims for refills delivered/shipped prior to the client exhausting their supply, but the provider must not dispense supplies that exceed a client's expected utilization;

(D) Supplies dispensed are based on the practitioner's order. Regardless of utilization, a provider must not dispense more than a three-month quantity of supplies at a time. This three-month dispensing restriction for supplies may be further limited by rule limitations of coverage;

(E) The provider must not automatically ship, dispense or deliver a quantity of supplies on a predetermined regular basis, even if the client or designee has "authorized" this in advance.

(F) Shipping and handling charges are not covered;

(f) The following services are not covered:

(A) Pick-up, delivery, shipping and handling charges for DMEPOS, whether rented or purchased including travel time:

(i) These costs are included in the calculations for allowable rates;

(ii)These charges are not billable to the client;

(B) Supplies used with DME or a prosthetic device prior to discharge from a hospital or nursing facility;

(C) Surgical dressings, urological supplies, or ostomy supplies applied in the hospital or nursing facility, including items worn home by the client.

(2) Documentation Requirements:

(a) For Repairs, Servicing and Temporary Replacement: A new Certificate of Medical Necessity (CMN) and/or physician's order is not required;

(b) Submit the following documentation with the prior authorization request:

(A) For Repairs/Servicing:

(i) Narrative description, manufacturer and brand name/model name and number, serial number and original date of purchase for the covered equipment in need of repair; and

(ii) Itemized statement of parts needed for repair including the estimated date of service, manufacturer's name (if billing for parts, include manufacturer's name and part number for each part), product name, part number, manufacturer's suggested retail price or manufacturer's invoice price and estimated labor time; and

(iii) Justification of the client's medical need for the item and statement that client owns the equipment in need of repair;

(B) For Temporary Replacement:

(i) Narrative description, manufacturer and brand name/model name and number, serial number and original date of purchase for the covered equipment in need of repair; and

(ii) Narrative description, manufacturer and brand name/model name and number of the replacement equipment; and

(iii) Itemized statement of parts needed for repair including the estimated date of service, manufacturer's name (if billing for parts, include manufacturer's name and part number for each part), product name, part number, manufacturer's suggested retail price or manufacturer's invoice price and estimated labor time; and

(iv) Justification of the client's medical need for the item and statement that client owns the equipment in need of repair; and

(v) Description of why repair takes more than one day to complete;

(C) For Permanent Replacement: See specific coverage criteria in Chapter 410, Division 122 for more information;

(D) For Proof of Delivery: DMEPOS providers are required to:

(I) Maintain proof of delivery documentation to the client in their records for seven years;

(II) Maintain documentation that supports that conditions of coverage in this rule are met;

(III) Make proof of delivery documentation available to DMAP upon request;

(c) Proof of delivery requirements are based on the method of delivery;

(d) A signed and dated delivery slip is required for items delivered directly by the provider to the client or designee. The delivery slip must include the following:

(A) When a designee signs the delivery slip, their relationship to the client must be noted and the signature legible;

(B) The client or designee's signature with the date the items were received; and

(C) Client's name, and

(D) Quantity, brand name, serial number and a detailed description of the items being delivered; and

(E) The date of signature on the delivery slip must be the date the DMEPOS item is received by the client or designee; and

(F) The date the client receives the item is the date of service;

(e) If the provider uses a delivery/shipping service or mail order, an example of proof of delivery would include the service's tracking slip and the provider's own shipping invoice:

(A) The provider's shipping invoice must include the:

(i) Client's name, and

(ii) Quantity, brand name, serial number and a detailed description of the items being delivered, and

(iii) Delivery service's package identification number associated with each individual client's package with a unique identification number and delivery address, including the actual date of delivery, if possible; and

(iv) The shipping date must be used as the date of service, unless the actual date of delivery is available, then use this date as the date of service;

(B) The delivery service's tracking slip must reference:

(i) Each client's packages; and

(ii) The delivery address and corresponding package identification number given by the delivery service;

(f) Providers may utilize a signed/dated return postage-paid delivery/shipping invoice from the client or designee as a form of proof of delivery that must contain the following information:

(A) Client's name;

(B) Quantity, brand name, serial number and a detailed description of items being delivered;

(C) Required signatures from either the client or the designee;

(g) Delivery to Nursing Facilities or Hospitals:

(A) The date of service is the date the DMEPOS item(s) is received by the nursing facility if delivered by the DMEPOS provider;

(B) The date of service is the shipping date (unless the actual delivery date is known and documented) if the DMEPOS provider uses a delivery/shipping service;

(h) For those clients who are residents of an assisted living facility, a twenty-four hour residential facility, an adult foster home, a child foster home, a private home or other similar living environment, providers must ensure supplies are identified and labeled for use only by the specific client for whom the supplies/items are intended.

(3) Procedure Codes:

(a) Replacement parts for wheelchair repair are billed using the specific HCPCS code, if one exists, or code K0108 (other accessories);

(b) E1340:

(A) Repair or non-routine service requiring the skill of a technician, labor component, per 15 minutes;

(B) This code is used for services not covered by other codes or combination of codes in reference to the repairs of DMEPOS;

(c) K0108 — Other wheelchair accessories — PA;

(d) K0462 — Temporary replacement for client-owned equipment being repaired, any type — Prior authorization (PA) required — PA.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0186

Payment Methodology

(1) The Division of Medical Assistance Programs (DMAP) utilizes a payment methodology for covered durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which is generally based on Medicare's fee schedule.

(2) Payment is calculated using the DMAP fee schedule amount, the manufacturer's suggested retail price (MSRP) or the actual charge submitted, whichever is lowest.

(3) DMAP reimburses for the lowest level of service, which meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) Reimbursement for durable medical equipment, miscellaneous (E1399) and other wheelchair accessories (K0108) is capped as follows:

(a) E1399 — $5772.00;

(b) K0108 — $11,913.41.

(5) Reimbursement for codes E1399 and K0108 is determined as either:

(a) 80% of the Manufacturer's Suggested Retail Price (MSRP); or,

(b) If the MSRP is not available, the lowest amount of the following, plus 20 percent:

(A) Manufacturer's invoice; or

(B) Manufacturer's wholesale price; or

(C) Acquisition cost; or

(D) Manufacturer's bill to provider;

(c) If (5)(a) or (b) are not available, reimbursement will be the "estimated price" plus 20 percent. An "estimated price" is the price the provider expects the manufacturer to charge.

(6) When requesting prior authorization (PA) for items billed at or above $100, the DMEPOS provider:

(a) Must submit a copy of:

(A) The items from (5)(a–c) that will be used to bill; and,

(B) Name of the manufacturer, description of the item, including product name/model name and number and technical specifications;

(b) May be required to submit a picture of the item.

(7) The DMEPOS provider must submit verification for items billed with codes A4649 (surgical supply; miscellaneous), E1399 (durable medical equipment, miscellaneous) and K0108 (wheelchair component or accessory, not otherwise specified) when no specific Healthcare Common Procedure Coding System (HCPCS) code is available and an item category is not specified in chapter 410, division 122 rules. Verification can come from an organization such as the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC).

(8) DMAP may review items that exceed the maximum allowable/cap on a case-by-case basis. For these situations, the provider must submit the following documentation:

(a) Documentation that supports the client meets all of the coverage criteria for the less costly alternative; and,

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) which clearly explains why the less costly alternative is not sufficient to meet the client's medical needs, and;

(c) The expected hours of usage per day, and;

(d) The expected outcome or change in client's condition.

(9) For codes A4649, E1399 and K0108 when $150.00 or less per each unit:

(a) Only items that have received an official product review coding decision from SADMERC with codes A4649, E1399 or K0108 may be billed to DMAP. These products must be listed in the SADMERC's Durable Medical Equipment Coding System Guide (DMECS) DMEPOS Product Classification Lists;

(b) Subject to service limitations of DMAP rules;

(c) PA is not required.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0202

Continuous Positive Airway Pressure (CPAP) System

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover continuous positive airway pressure (CPAP) systems for the following conditions:

(a) For adults (age 19 or older):

(A) Obstructive sleep apnea (OSA) when either of the following criteria on polysomnography is met:

(i) Apnea Hypopnea Index (AHI) greater than or equal to 15 events per hour; or

(ii) AHI greater than or equal to 5, and less than15 events per hour with documentation demonstrating any of the following symptoms:

(I) Excessive daytime sleepiness, as documented by either a score of greater than 10 on the Epworth Sleepiness scale or inappropriate daytime napping, (e.g., during driving, conversation or eating) or sleepiness that interferes with daily activities;

(II) Impaired cognition or mood disorders;

(III) Hypertension;

(IV) Ischemic heart disease or history of stroke;

(V) Cardiac arrhythmias;

(VI) Pulmonary hypertension; or

(B) Upper airway resistance syndrome (UARS) as defined by AHI less than 5/hr. but with more than 10 EEG arousals/hr. associated with increased respiratory efforts (with or without concomitant observed snoring) and increased negative esophageal pressure (more negative than -10cms H2O);

(C) Auto-CPAP (APAP) as a second or third line alternative therapy for obstructive sleep apnea when the following criteria are met:

(i) The level of fixed CPAP required is at least 10cms H2O as evidenced by an in-laboratory, technician-attended CPAP titration during polysomnography: and

(ii)The client is intolerant of high fixed CPAP pressures (>10cms H2O) despite documented client education and interventions to improve client comfort and compliance. These interventions should include:

(I) The use of a topical nasal corticosteroid spray or anticholinergic spray if nasal complaints are significant; and

(II) Changes made by a nurse or technician, in consultation with the attending physician, to the CPAP circuit or mask, using different nose masks, face masks, nasal pillows or head harnesses as appropriate to achieve maximum client comfort;

(b) For children (under age 19) with OSA when the following criteria are met:

(A) There is a documented diagnosis of OSA and polysomnography demonstrates an apnea index (AI) or AHI equal to or greater than one (1); and

(B) One of the following is met:

(i) Adenotonsillectomy has been unsuccessful in relieving OSA: or

(ii) Adenotonsillar tissue is minimal; or

(iii) Adenotonsillectomy is inappropriate based on OSA being attributable to another underlying cause (e.g., craniofacial anomaly) or adenotonsillectomy is contraindicated;

(c) A three month trial (rental) period for CPAP is required prior to purchase;

(d) Rental charges apply toward purchase;

(e) Continued coverage of an E0601 device beyond the first three months of therapy: Ongoing rental beyond the first three months when conditions of coverage are met is an option in lieu of purchase when medically appropriate and cost effective;

(f) For extended use of a CPAP device beyond the first three months of initial therapy, clinical evaluation by the treating practitioner is required to establish medical appropriateness with documentation about the therapeutic effects of therapy, as well as information about client compliance/tolerance of the therapy. Generally, consistent client home use of these devices at the effective pressure for an average of four (4) hours per every 24-hour period at least 80 percent of the time represents client compliance with the therapy plan;

(g) Polysomnographic studies must be scored according to the recommended rules as described in the American Academy of Sleep Medicine (AASM) Manual for the Scoring of Sleep and Associated Events;

(h) Payment Authorization: From the initial date of service through the second date of service, CPAP rental and only related accessories necessary for the effective use of the CPAP during this time period and subject to rule limitations may be dispensed without prior authorization (PA). The provider is still responsible to ensure all rule requirements are met. Payment authorization (i.e., a payment authorization number for billing) is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require PA;

(i) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must specifically request ongoing CPAP supplies and accessories, subject to rule limitations and requirements, before they are dispensed. The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must not automatically dispense a quantity of supplies and accessories on a predetermined regular basis, even if the client has "authorized" this in advance;

(j) It is the provider's responsibility to monitor appropriate and effective use of the device as ordered by the treating practitioner. When the equipment is not being used as prescribed, the provider must stop billing for the equipment and related accessories and supplies;

(k) For auto-titrating CPAP devices, use HCPCS code E0601;

(l) Products must be coded as published in the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) Product Classification List for CPAP Systems and Respiratory Assist Devices;

(m) The following services are not covered:

(A) For adults:

(i) CPAP when conditions of coverage as described in this rule are not met;

(ii) Unattended auto-CPAP (APAP) as an alternative to technician-titrated CPAP in clients with OSA, or for the treatment of clients with the following conditions:

(I) Central apnea;

(II) Congestive heart failure;

(III) Lung disease (e.g., chronic obstructive pulmonary disease);

(IV) Nocturnal O2 desaturation due to conditions other than obstructive sleep apnea;

(V) Absence of snoring (either natural or secondary to palatal surgery;

(B) Pediatric use of CPAP for OSA when the conditions of coverage as described in this rule are not met.

(2) Accessories:

(a) Accessories used with an E0601 device are covered when the coverage criteria for the device are met;

(b) Accessories are separately reimbursable at the time of initial issue and when replaced;

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating practitioner for use with a covered E0601 device;

(d) The following represents the usual maximum amount of accessories expected to be medically appropriate:

(A) A4604 — 1 per 3 months;

(B) A7027 — 1 per 3 months;

(C) A7028 — 2 per month;

(D) A7029 — 2 per month;

(E) A7030 — 1 per 3 months;

(F) A7031 — 1 per month;

(G) A7032 — 2 per month;

(H) A7033 — 2 per month;

(I) A7034 — 1 per 3 months;

(J) A7035 — 1 per 6 months;

(K) A7036 — 1 per 6 months;

(L) A7037 — 1 per 3 months;

(M) A7038 — 2 per month;

(N) A7039 — 1 per 6 months;

(O) A7046 — 1 per 6 months;

(3) Guidelines:

(a) Polysomnography is the continuous and simultaneous monitoring and recording of various physiological and pathophysiological parameters of sleep with physician review, interpretation, and report. It must include sleep staging, which is defined to include a 1-4 lead electroencephalogram (EEG), and electro-oculogram (EOG), and a submental electromyogram (EMG). It must also include at least the following additional parameters of sleep: airflow, respiratory effort, and oxygen saturation by oximetry. It may be performed as either a whole night study for diagnosis only or as a split night study to diagnose and initially evaluate treatment;

(b) For the purposes of this rule, polysomnographic studies must be performed in an attended, facility-based sleep study laboratory, and not in the home or in a mobile facility. These labs must be qualified providers of Medicare services and comply with all applicable state regulatory requirements;

(c) The diagnostic portion of the polysomnogram recording must be a minimum of two hours;

(d) Polysomnographic studies must not be performed by a DMEPOS provider;

(e) Apnea is defined as the cessation of airflow for at least 10 seconds documented on a polysomnogram;

(f) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a 4% decrease in oxygen saturation;

(g) The AHI is defined as the average number of episodes of apneas and hypopneas per hour and must be based on a minimum of two hours of sleep without the use of a positive airway pressure device, reported by polysomnography using actual recording hours of sleep(i.e., the AHI may not be extrapolated or projected).

(4) Documentation Requirements:

(a) For CPAP rental:

(A) Initial coverage: Prior to the third date of service, submit the following:

(i) A facility-based polysomnogram report as described in this rule and scored as described in (1)(g) that supports a diagnosis of OSA or UARS and, if applicable;

(ii) Any other medical documentation that supports indications of coverage;

(B) For extended rental use of a CPAP device beyond the first three months of initial therapy, submit the following no sooner than the 61st day after initiating therapy and prior to the fourth date of service:

(i) Clinical evaluation documentation by the treating practitioner which substantiates medical appropriateness and the therapeutic effects of therapy, as well as information about client compliance/tolerance of the therapy; and

(ii) Summary of CPAP compliance report (download), if available;

(b) For CPAP purchase: Submit the following:

(A) A facility-based polysomnogram report as described in this rule and scored as described in (1)(g) that supports a diagnosis of OSA or UARS; and

(B) After the initial three month trial period:

(i) Clinical evaluation documentation by the treating practitioner which substantiates medical appropriateness and the therapeutic effects of therapy, as well as information about client compliance/tolerance of the therapy; and

(ii) Summary of CPAP compliance report (download), if available;

(C) Any other medical documentation that supports indications of coverage.

(5) Table 122-0202 — CPAP System.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0250

Breast Pumps

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover electric breast pumps for any of the following conditions:

(A) Medical appropriateness for infant:

(i) Pre-term;

(ii) Term and hospitalized beyond five days;

(iii) Separated from mother for an undetermined length of time;

(iv) Cleft palate or cleft lip;

(v) Cranial-facial abnormalities;

(vi) Inability to suck adequately;

(vii) Re-hospitalized for longer than two days;

(viii) Failure to thrive;

(B) Medical appropriateness for mother:

(i) Breast abscess;

(ii) Mastitis;

(iii) Hospitalized due to illness or surgery (for short-term use to maintain lactation);

(iv) Short-term treatment with medications that may be transmitted to the infant;

(v) A hand pump or manual expression has been tried for one week without success in mothers with established milk supply;

(b) Documentation that transition to breast feeding started as soon as the infant was stable enough to begin breast feeding;

(c) Use E1399 for an electric breast pump starter kit for single or double pumping;

(d) An electric breast pump starter kit will be reimbursed separately from the breast pump rental;

(e) Electric breast pump rental cannot exceed 60 days,

(f) An electric breast pump may only be purchased when cost effective for one of the following conditions:

(i) Cleft palate or cleft lip;

(ii) Cranial-facial abnormalities;

(iii) Inability to suck adequately;

(iv) Infant is separated from mother for an undetermined length of time;

(g) Electric breast pump rental charges apply to the purchase price;

(h) The following services are not covered:

(i) Accessories;

(ii) An electric breast pump for the comfort and convenience of the mother;

(iii) Supplemental Nutrition System (SNS);

(iv) Heavy duty, hospital grade breast pumps;

(v) Replacement parts.

(2) Documentation Requirements:

(a) For services that require prior authorization (PA): Submit documentation for review which supports conditions of coverage as specified in this rule are met;

(b) For services that do not require PA: Medical records which support conditions of coverage as specified in this rule are met must be on file with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request.

(3) Procedure Codes:

(a) E0602 — Breast pump, manual, any type — DMAP will purchase;

(b) E0603 — Breast pump, electric (AC and/or DC), any type:

(A) DMAP will purchase or rent on a monthly basis;

(B) PA required; .

(c) E1399 — Electric breast pump starter kit;

(A) DMAP will purchase;

(B) PA required.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0300

Light Therapy

(1) Phototherapy (bilirubin light therapy):

(a)The Division of Medical Assistance Programs (DMAP) may cover home phototherapy for a term or near-term infant whose elevated bilirubin is not due to a primary hepatic disorder or other hemolytic disorder that requires inpatient care;

(b) E0202 includes equipment rental, supplies, delivery, set-up, pick-up, training, instruction and 24 hour on-call service necessary for the effective use of the equipment;

(c) Documentation by the treating physician must indicate home phototherapy is the appropriate treatment modality;

(d) Home phototherapy may be covered for any of the following conditions:

(A) Jaundice in healthy term (>37 weeks) infant ready to be discharged or recently discharged from the hospital; feeding well/appears well with serum bilirubin values as follows:

(i) 25-48 hours old ≥12 mg/dl total serum bilirubin; or

(ii) 49-72 hours old ≥15 mg/dl total serum bilirubin; or

(iii) >72 hours old ≥ 17 mg/dl total serum bilirubin; or

(B) Jaundice in preterm infant <37 weeks when total serum bilirubin level is ≥10mg/dl;

(e) Treatment days will be determined based on lab values.

(2) Documentation Requirements:

(a) For services that require prior authorization (PA): Submit documentation for review which supports conditions of coverage as specified in this rule are met;

(b) For services that do not require PA: Medical records which support conditions of coverage as specified in this rule are met must be on file with the DMEPOS provider and made available to DMAP on request.

(3) Table 122-0300 Light Therapy

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0320

Manual Wheelchair Base

(1) Indications and Limitations of Coverage and/or Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a manual wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADL); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010, Definitions, for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the manual wheelchair that is being requested;

(D) Use of a manual wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested manual wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested manual wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) DMAP may authorize a manual wheelchair for any of the following situations, only when conditions of coverage as specified in (1)(a) of this rule are met:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a manual wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a manual wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of a manual wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a manual wheelchair;

(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair. See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing).

(c) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(d) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(e) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(f) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(g) DMAP may cover an adult tilt-in-space wheelchair (E1161) when a client meets all of the following conditions:

(A) A standard base with a reclining back option will not meet the client's needs;

(B) Is dependent for transfers;

(C) Spends a minimum of six hours a day in a wheelchair;

(D) The client's plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(E) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(h) One month's rental for a manual adult tilt-in-space wheelchair (E1161) may be covered for a client residing in a nursing facility when all of the following conditions are met:

(A) The anticipated nursing facility length of stay is 30 days or less;

(B) The conditions of coverage for a manual tilt-in-space wheelchair as described in (1)(g)(A)-(E) are met;

(C) The client is expected to have an ongoing need for this same wheelchair after discharge to the home setting;

(D) Coverage is limited to one month's rental;

(i) DMAP may cover a standard hemi (low seat) wheelchair (K0002) when a client requires a lower seat height (17" to 18") because of short stature or needing assistance to place his/her feet on the ground for propulsion;

(k) DMAP may cover a lightweight wheelchair (K0003) when a client:

(A) Cannot self-propel in a standard wheelchair using arms and/or legs; and

(B) Can and does self-propel in a lightweight wheelchair.

(j) High-strength lightweight wheelchair (K0004):

(A) DMAP may cover a high-strength lightweight wheelchair (K0004) when a client:

(i) Self-propels the wheelchair while engaging in frequent activities that cannot be performed in a standard or lightweight wheelchair; and/or

(ii) Requires a seat width, depth or height that cannot be accommodated in a standard, lightweight or hemi-wheelchair, and spends at least two hours per day in the wheelchair.

(B) If the expected duration of need is less than three months (e.g., post-operative recovery), a high-strength lightweight wheelchair is rarely medically appropriate;

(l) DMAP may cover an ultra-light-weight wheelchair (K0005) when a client has medical needs that require determination on a case-by-case basis;

(m) DMAP may cover a heavy-duty wheelchair (K0006) when a client weighs more than 250 pounds or has severe spasticity;

(n) DMAP may cover an extra heavy-duty wheelchair (K0007) when a client weighs more than 300 pounds;

(o) For a client residing in a nursing facility, an extra heavy-duty wheelchair (K0007) may only be covered when a client weighs more than 350 pounds;

(p) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement and Delivery;

(q) A manual wheelchair for use only outside the home is not covered.

(2) Coding Guidelines:

(a) Adult manual wheelchairs (K0001-K0007, K0009, E1161) have a seat width and a seat depth of 15" or greater;

(b) For codes K0001-K0007 and K0009, the wheels must be large enough and positioned so that the user can self-propel the wheelchair;

(c) In addition, specific codes are defined by the following characteristics:

(A) Adult tilt-in-space wheelchair (E1161):

(i) Ability to tilt the frame of the wheelchair greater than or equal to 45 degrees from horizontal while maintaining the same back-to-seat angle; and

(ii) Lifetime warranty on side frames and crossbraces.

(B) Standard wheelchair (K0001):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: 19" or greater; and

(iii) Weight capacity: 250 pounds or less.

(C) Standard hemi (low seat) wheelchair (K0002):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: Less than 19"; and

(iii) Weight capacity: 250 pounds or less.

(D) Lightweight wheelchair (K0003):

(i) Weight: 34-36 pounds; and

(ii) Weight capacity: 250 pounds or less.

(E) High strength, lightweight wheelchair (K0004):

(i) Weight: Less than 34 pounds; and

(ii) Lifetime warranty on side frames and crossbraces.

(F) Ultralightweight wheelchair (K0005):

(i) Weight: Less than 30 pounds;

(ii) Adjustable rear axle position; and

(iii) Lifetime warranty on side frames and crossbraces.

(G) Heavy duty wheelchair (K0006) has a weight capacity greater than 250 pounds;

(H) Extra heavy duty wheelchair (K0007) has a weight capacity greater than 300 pounds.

(d) Coverage of all adult manual wheelchairs includes the following features:

(A) Seat width: 15"-19";

(B) Seat depth: 15"-19";

(C) Arm style: Fixed, swingaway, or detachable, fixed height;

(D) Footrests: Fixed, swingaway, or detachable.

(e) Codes K0003-K0007 and E1161 include any seat height;

(f) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(g) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(h) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(i) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229 (see 410-122-0720 Pediatric Wheelchairs);

(j) For more information on other features included in the allowance for the wheelchair base, see 410-122-0340 Wheelchair Options/Accessories;

(k) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Functional Mobility Evaluation :

(A) Providers must submit medical documentation that supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned manual wheelchairs except for K0001, K0002, or K0003 (unless modifications are required).

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a PT, OT, treating physician or nurse practitioner. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician or nurse practitioner and the physical therapist (PT) or occupational therapist (OT).

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a PT, OT, treating physician or nurse practitioner that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a PT, OT, treating physician or nurse practitioner about the following elements that support coverage criteria are met for a manual wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, power-operated vehicle (POV), or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a manual wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a PT, OT, treating physician or nurse practitioner that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All HCPCS codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician or nurse practitioner, identifying the specific type of manual wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority;

(d) For purchase of K0001, K0002 or K0003 (without modifications), send documentation listed in (3)(b)(A–E);

(e) For an ultralight wheelchair (K0005), documentation from a PT, OT, treating physician or nurse practitioner that includes a description of the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home. This may include what types of activities the client frequently encounters and whether the client is fully independent in the use of the wheelchair. Describe the features of the K0005 base which are needed compared to the K0004 base;

(f) When code K0009 is requested, send all information from a PT, OT, treating physician or nurse practitioner that justifies the medical appropriateness for the item;

(g) Any additional documentation that supports indications of coverage are met as specified in this policy;

(h) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician or nurse practitioner, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;

(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(i) All documentation listed in section (3) of this rule must be kept on file by the DMEPOS provider;

(j) Documentation that coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request.

(4) Table 122-0320 – Manual Wheelchair Base.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 18-1994(Temp), f. & cert. ef. 4-1-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0325

Motorized/Power Wheelchair Base

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a power wheelchair (PWC) (K0813-K0816, K0820-K0829, K0835-K0843, K0848-K0864, K0898) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs) ; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day;

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the PWC that is being requested;

(E) Use of a PWC will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(F) The client is willing to use the requested PWC in the home, and the client will use it on a regular basis in the home;

(G) The client has either:

(i) Strength, postural stability, or other physical or mental capabilities insufficient to safely operate a power-operated vehicle (POV) in the home; or

(ii) Living quarters that do not provide adequate access between rooms, maneuvering space, and surfaces for the operation of a POV with a small turning radius;

(H) The client has either:

(i) Sufficient mental and physical capabilities to safely operate the PWC that is being requested; or

(ii) A caregiver who is unable to adequately propel an optimally configured manual wheelchair, but is available, willing, and able to safely operate the PWC that is being requested;

(I) The client's weight is less than or equal to the weight capacity of the PWC that is being requested;

(b) Only when conditions of coverage as specified in (1) (a) of this rule are met, may DMAP authorize a PWC for any of the following situations:

(A) When the PWC can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits, and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a PWC will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a PWC may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of PWC coverage if it results in the client continuing to have a significant lim-

itation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a PWC;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement costs;

(C) When a covered client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair (see OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

(c) For a PWC to be covered, the treating physician or nurse practitioner must conduct a face-to-face examination of the client before writing the order and the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device;

(A) When this examination is performed during a hospital or nursing facility stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(B) The physician or nurse practitioner may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in the inpatient or outpatient hospital setting may perform part of the face-to-face examination;

(i) If the client was referred to the PT/OT before being seen by the physician or nurse practitioner, then once the physician or nurse practitioner has received and reviewed the written report of this examination, the physician or nurse practitioner must see the client and perform any additional examination that is needed. The physician's or nurse practitioner's report of the visit should state concurrence or any disagreement with the PT/OT examination. In this situation, the physician or nurse practitioner must provide the DMEPOS provider with a copy of both examinations within 45 days of the face-to-face examination with the physician or nurse practitioner;

(ii) If the physician or nurse practitioner examined the client before referring the client to a PT/OT, then again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician or nurse practitioner visit. However, it is also acceptable for the physician or nurse practitioner to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician or nurse practitioner must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period begins when the physician or nurse practitioner signs and dates the PT/OT examination;

(iii) If the PWC is a replacement of a similar item that was previously covered by DMAP or when only PWC accessories are being ordered and all other coverage criteria in this rule are met, a face-to-face examination is not required;

(d) DMAP does not reimburse for another chair if a client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting the living quarters;

(f) The equipment must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Supplier (ATS) or Assistive Technology Practitioner (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client;

(g) Reimbursement for wheelchair codes include all labor charges involved in the assembly of the wheelchair and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the wheelchair;

(h) The delivery of the PWC must be within 120 days following completion of the face-to-face examination;

(i) A PWC may not be ordered by a podiatrist;

(j) The following services are not covered:

(i) A PWC for use only outside the home;

(ii) A PWC with a captain's chair for a client who needs a separate wheelchair seat and/or back cushion;

(iii) Items or upgrades that primarily allow performance of leisure or recreational activities including but not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, head lights, and tail lights;

(iv) Power mobility devices, not coded by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) or does not meet criteria (K0899);

(v) Power wheelchairs, group 4 (K0868-K0871, K0877-K0880, K0884-K0886);

(vi) Power wheelchairs, not otherwise classified (K0898);

(vii) Seat elevator PWCs (K0830, K0831).

(2) Coding Guidelines:

(a) Specific types of PWCs:

(A) A Group 1 PWC (K0813-K0816) or a Group 2 Heavy Duty (HD), Very Heavy Duty (VHD), or Extra Heavy Duty (EHD) wheelchair (K0824-K0829) may be covered when the coverage criteria for a PWC are met;

(B) A Group 2 Standard PWC with a sling/solid seat (K0820, K0822) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client is using a skin protection and/or positioning seat and/or back cushion that meets the coverage criteria defined in Wheelchair Options/Accessories, 410-122-0340;

(C) A Group 2 Single Power Option PWC (K0835 – K0840) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Requires a drive control interface other than a hand or chin-operated standard proportional joystick (examples include but are not limited to head control, sip and puff, switch control); or

(II) Meets the coverage criteria for a power tilt or recline seating system (see Wheelchair Options/Accessories, 410-122-0340) and the system is being used on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(D) A Group 2 Multiple Power Option PWC (K0841-K0843) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Meets the coverage criteria for a power tilt or recline seating system with three or more actuators (see Wheelchair Options/Accessories, 410-122-0340); or

(II) Uses a ventilator which is mounted on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT, OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(E) A Group 3 PWC with no power options (K0848-K0855) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client's mobility limitation is due to a neurological condition, myopathy or congenital skeletal deformity; and

(iii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical necessity for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, physician or nurse practitioner may have no financial relationship with the DMEPOS provider;

(F) A Group 3 PWC with Single Power Option (K0856-K0860) or with Multiple Power Options (K0861-K0864) may be covered when:

(i) The Group 3 criteria (2)(a)(E) (i-ii) are met; and

(ii) The Group 2 Single Power Option (2)(a)(C)(i)(I) or (II) and (2)(a)(C)(ii) or Multiple Power Options (2)(a)(D)(i)(I) or (II) and (2)(a)(D)(ii) (respectively) are met;

(b) PWC Basic Equipment Package: Each PWC code is required to include the following items on initial issue (i.e., no separate billing/payment at the time of initial issue, unless otherwise noted):

(A) Lap belt or safety belt (E0978);

(B) Battery charger single mode (E2366);

(C) Complete set of tires and casters any type (K0090, K0091, K0092, K0093, K0094, K0095, K0096, K0097, K0099);

(D) Legrests. There is no separate billing/payment if fixed or swingaway detachable non-elevating legrests with/without calf pad (K0051, K0052, E0995) are provided. Elevating legrests may be billed separately;

(E) Fixed/swingaway detachable footrests with/without angle adjustment footplate/platform (K0037, K0040, K0041, K0042, K0043, K0044, K0045, K0052);

(F) Armrests. There is no separate billing/ payment if fixed/swingaway detachable non-adjustable armrests with arm pad (K0015, K0019, K0020) are provided. Adjustable height armrests may be billed separately;

(G) Upholstery for seat and back of proper strength and type for patient weight capacity of the power wheelchair (E0981, E0982);

(H) Weight specific components per patient weight capacity;

(I) Controller and Input Device: There is no separate billing/payment if a non-expandable controller and proportional input device (integrated or remote) is provided. If a code specifies an expandable controller as on option (but not a requirement) at the time of initial issue, it may be separately billed;

(c) If a client needs a seat and/or back cushion but does not meet coverage criteria for a skin protection and/or positioning cushion, it may be appropriate to request a captain's chair seat rather than a sling/solid seat/back and a separate general use seat and/or back cushion;

(d) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified (see OAR 410-122-0720 Pediatric Wheelchairs);

(e) Contact the SADMERC regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:

(a) A copy of the written report of the face-to-face examination of the client by the physician or nurse practitioner:

(A) This report must include information related to the following:

(i) This client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(iii) Why a manual wheelchair can't meet this client's mobility needs in the home;

(iv) Why a POV/scooter can't meet this client's mobility needs in the home;

(v) This client's physical and mental abilities to operate a PWC safely in the home;

(I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in activities of daily living (ADLs), how these conditions will be ameliorated or compensated by use of the wheelchair;

(II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home.

(B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or PWC and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Although a client who qualifies for coverage of a PWC may use that device outside the home, because the DMAP coverage of a wheelchair is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;

(b) The physician's or nurse practitioner's written order, received by the DMEPOS provider within 45 days (date stamp or equivalent must be used to document receipt date) after the physician's or nurse practitioner's face-to-face examination. The order must include all of the following elements:

(A) Client's name;

(B) Description of the item that is ordered. This may be general — e.g., "power wheelchair" or "power mobility device" — or may be more specific;

(i) If this order does not identify the specific type of PWC that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific PWC that is being ordered and any options and accessories requested.

(ii) The items on this clarifying order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination;

(C) Date of the face-to-face examination;

(D) Pertinent diagnoses/conditions and diagnosis codes that relate specifically to the need for the PWC;

(E) Length of need;

(F) Physician's or nurse practitioner's signature;

(G) Date of physician's or nurse practitioner's signature;

(c) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable;

(e) For the home assessment, prior to or at the time of delivery of a PWC, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a PWC. Assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) A written document (termed a detailed product description) prepared by the DMEPOS provider and signed and dated by the physician or nurse practitioner that includes:

(i) The specific base (HCPCS code and manufacturer name/model) and all options and accessories (including HCPCS codes), whether PA is required or not, that will be separately billed;

(ii) The DMEPOS provider's charge and the DMAP fee schedule allowance for each separately billed item;

(iii) If there is no DMAP fee schedule allowance, the DMEPOS provider must enter "not applicable";

(iv)The DMEPOS provider must receive the signed and dated detailed product description from the physician or nurse practitioner prior to delivery of the PWC;

(v) A date stamp or equivalent must be used to document receipt date of the detailed product description; and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The DMEPOS provider must keep the above documentation on file;

(i) Documentation that the coverage criteria have been met must be present in the client's medical records and made available to DMAP on request.

(4) Prior Authorization:

(a) All codes in this rule required PA and may be purchased, rented and repaired;

(b) See the DMAP fee schedule for more information;

(c) Codes specified in this rule are not covered for clients residing in nursing facilities;

(d) Rented equipment is considered purchased when the client has used the equipment for 13 months, when the provider's actual charge for purchase is met, when the manufacturer's suggested retail price (MSRP) is met or when the DMAP fee schedule allowable for purchase is met, whichever is the lowest;

(e) For PWCs furnished on a rental basis with dates of services prior to November 15, 2006, use codes K0010, K0011, K0012 and K0014 as appropriate.

(5) Table 122-0325.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0365

Standing and Positioning Aids

(1) Indications and coverage: If a client has one aid that meets his/her medical needs, regardless of who obtained it, the Division of Medical Assistance Programs (DMAP) will not provide another aid of same or similar function.

(2) Documentation to be submitted for prior authorization (PA) and kept on file by the Durable Medical Equipment (DME) provider:

(a) Documentation of medical appropriateness, which has been reviewed and signed by the prescribing practitioner;

(b) The care plan outlining positioning and treatment regime, and all DME currently available for use by the client;

(c) The physician's order;

(d) The documentation for customized positioner must include objective evidence that commercially available positioners are not appropriate;

(e) Each item requested must be itemized with description of product, make, model number, and manufacturers suggested retail price (MSRP);

(f) Submit Positioner Justification form (DMAP 3155) or reasonable facsimile, with recommendation for most appropriate equipment. This must be submitted by physical therapist, occupational therapist, or prescribing practitioner when requesting a PA;

(3) Gait Belts:

(a) Covered when:

(A) The client weighs 60 lbs. or more; and

(B) The care provider is trained in the proper use; and

(C) The client can walk independently, but needs:

(i) A minor correction of ambulation; or

(ii) Needs minimal or standby assistance to walk alone; or

(iii) Requires assistance with transfer;

(b) Use code E0700.

(4) Standing frame systems, prone standers, supine standers or boards and accessories for standing frames are covered when:

(a) The client has been sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and,

(b) The client is following a therapy program initially established by a physical or occupational therapist; and

(c) The home is able to accommodate the equipment; and

(d) The weight of the client does not exceed manufacturer's weight capacity; and

(e) The client has demonstrated an ability to utilize the standing aid independently or with caregiver; and

(f) The client has demonstrated compliance with other programs; and

(g) The client has demonstrated a successful trial period in a monitored setting; and

(h) The client does not have access to equipment from another source.

(5) Sidelyers and custom positioners must meet the following criteria in addition to the criteria in Table 122-0365:

(a) The client must be sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and

(b) The client must be following a therapy program initially established by a physical or occupational therapist; and,(c) The home must be able to accommodate the equipment; and

(d) The caregiver and/or family are capable of using the equipment appropriately.

(6) Criteria for Specific Accessories:

(a) A back support may be covered when a client:

(A) Needs for balance, stability, or positioning assistance; or

(B) Has extensor tone of the trunk muscles; or

(C) Needs for support while being raised or while completely standing;

(b) A tall back may be covered when:

(A) The client is over 5'11" tall; and

(B) The client has no trunk control and needs additional support; or

(C) The client has more involved need for assistance with balance, stability, or positioning;

(c) Hip guides may be covered when a client:

(A) Lacks motor control and/or strength to center hips; or

(B) Has asymmetrical tone which causes hips to pull to one side; or

(C) Has spasticity; or

(D) Has low tone or high tone; or

(E) Need for balance, stability, or positioning assistance;

(d) A shoulder retractor or harness may be covered when:

(A) Erect posture cannot be maintained without support due to lack of motor control or strength; or

(B) Has kyphosis; or

(C) Presents strong flexor tone;

(e) Lateral supports may be covered when a client:

(A) Lacks trunk control to maintain lateral stability; or

(B) Has scoliosis which requires support; or

(C) Needs a guide to find midline;

(f) A headrest may be covered when a client:

(A) Lacks head control and cannot hold head up without support; or

(B) Has strong extensor thrust pattern that requires inhibition;

(g) Independent adjustable knee pads may be covered when a client:

(A) Has severe leg length discrepancy; or

(B) Has contractures in one leg greater than the other;

(h) An actuator handle extension may be covered when a client:

(A) Has no caregiver; and

(B) Is able to transfer independently into standing frame; and

(C) Has limited range of motion in arm and/or shoulder and cannot reach actuator in some positions;

(i) Arm troughs may be covered when a client:

(A) Has increased tone which pulls arms backward so hands cannot come to midline; or

(B) Has poor tone, strength, or control is so poor that causes arms to hang out to side and backward, causing pain and risking injury; or

(C) Needs for posture;

(j) A tray may be covered when proper positioning cannot be accomplished by other accessories;

(k) Abductors may be covered to reduce tone for proper alignment and weight bearing;

(l) Sandals (shoe holders) may be covered when a client:

(A) Has dorsiflexion of the foot or feet; or

(B) Has planar flexion of the foot or feet or

(C) Has eversion of the foot or feet; or

(D) Needs for safety.

(7) **Table 122-0365**.

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

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410-122-0400

Pressure Reducing Support Surfaces

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) Group 1 (A4640, E0180-E0182, E0184-E0189, and E0196-E0199):

(A) The Division of Medical Assistance Programs (DMAP) may cover a Group 1 support surface when the client meets:

(i) Criterion (I), or;

(ii) Criteria (II) or (III) and at least one of criteria (IV)–(VII):

(I) Completely immobile — i.e., client cannot make changes in body position without assistance;

(II) Limited mobility — i.e., client cannot independently make changes in body position significant enough to alleviate pressure;

(III) Any stage pressure ulcer on the trunk or pelvis;

(IV) Impaired nutritional status;

(V) Fecal or urinary incontinence;

(VI) Altered sensory perception;

(VII) Compromised circulatory status;

(B) The DMEPOS provider must provide a support surface in which the client does not "bottom out";

(C) DMAP does not cover foam overlays or mattresses without a waterproof cover, since these are not considered durable;

(D) DMAP does not cover pressure reducing support surfaces for the prevention of pressure ulcers or pain control;

(E) The allowable rental fee includes all equipment, supplies and services for the effective use of the pressure reducing support surface;

(b) Group 2 (E0193, E0277, and E0371-E0373):

(A) A Group 2 support surface may be covered for up to an initial three month rental period when the client meets:

(i) Criterion (I) and (II) and (III), or;

(ii) Criterion (IV), or;

(iii) Criterion (V) and (VI);

(I) Multiple stage II pressure ulcers located on the trunk or pelvis (ICD-9 707.02 –707.05);

(II) Client has been on a comprehensive ulcer treatment program for at least the past month which includes the following: use of an appropriate Group 1 support surface; education of the client, if appropriate, and caregiver on the prevention and/or management of pressure ulcers; regular assessment by a nurse, physician, or other licensed healthcare practitioner (usually at least weekly for a patient with a stage III or IV ulcer); appropriate turning and positioning; appropriate wound care (for a stage II, III, or IV ulcer); appropriate management of moisture/incontinence; and nutritional assessment and intervention consistent with the overall plan of care;

(III) The ulcers have worsened or remained the same over the past month;

(IV) Large or multiple stage III or IV pressure ulcer(s) on the trunk or pelvis (ICD-9 707.02–707.05); A large wound is generally any wound of eight square centimeters (length x width) or more. Individual client circumstances may be weighed. Undermining and/or tunneling, anatomic location on the body and the size of the client may be taken into account;

(V) Recent myocutaneous flap or skin graft for a pressure ulcer on the trunk or pelvis (surgery within the past 60 days) (ICD-9 707.02–707.05);

(VI) The client has been on a Group 2 or 3 support surface immediately prior to a recent discharge from a hospital or nursing facility (discharge within the past 30 days);

(B) The DMEPOS provider must provide a support surface in which the patient does not "bottom out";

(C) When a Group 2 surface is requested following a myocutaneous flap or skin graft, coverage generally is limited to 60 days from the date of surgery;

(D) DMAP may cover continued use of a Group 2 support surface if healing continues;

(E) DMAP does not cover pressure reducing support surfaces for the prevention of pressure ulcers or pain control;

(F) The allowable rental fee includes all equipment, supplies and services for the effective use of the pressure reducing support surface;

(c) DMAP may consider coverage for bariatric pressure reducing support surfaces only coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility, subject to service limitations of DMAP rules, only when the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric pressure reducing support surface has been assigned code E1399 by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC);

(d) Group 3: Air-fluidized beds (E0194) are not covered.

(2) Definitions for Group 1 and Group 2:

(a) Bottoming out: Finding that an outstretched hand, placed palm up between the undersurface of the overlay or mattress and the patient's bony prominence (coccyx or lateral trochanter), can readily palpate the bony prominence. This bottoming out criterion should be tested with the client in the supine position with their head flat, in the supine position with their head slightly elevated (no more than 30 degrees), and in the sidelying position;

(b) Plan of care: Written guidelines developed to identify specific problems and needs of the client and interventions/regimen necessary to assist the client to achieve optimal health potential. Developing the plan of care includes establishing measurable client and nursing goals with time lines and determining nursing/caregiver/other discipline-assigned interventions to meet care objectives;

(c) The staging of pressure ulcers used in this rule is as follows:

(A) Stage I — Observable pressure related alteration of intact skin whose indicators as compared to the adjacent or opposite area on the body may include changes in one or more of the following: skin temperature (warmth or coolness), tissue consistency (firm or boggy feel) and/or sensation (pain, itching). The ulcer appears as a defined area of persistent redness in lightly pigmented skin, whereas in darker skin tones, the ulcer may appear with persistent red, blue, or purple hues;

(B) Stage II — Partial thickness skin loss involving epidermis, dermis, or both. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater;

(C) Stage III — Full thickness skin loss involving damage to, or necrosis of, subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue;

(D) Stage IV — Full thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule). Undermining and sinus tracts also may be associated with Stage IV pressure ulcers;

(3) Guidelines:

(a) Group 1:

(A) Codes E0185 and E0197-E0199 termed "pressure pad for mattress" describe non-powered pressure reducing mattress overlays and are designed to be placed on top of a standard hospital or home mattress;

(B) A gel/gel-like mattress overlay (E0185) is characterized by a gel or gel-like layer with a height of two inches or greater;

(C) An air mattress overlay (E0197) is characterized by interconnected air cells having a cell height of three inches or greater that are inflated with an air pump;

(D) A water mattress overlay (E0198) is characterized by a filled height of three inches or greater;

(E) A foam mattress overlay (E0199) is characterized by all of the following:

(i) Base thickness of two inches or greater and peak height of three inches or greater if it is a convoluted overlay (e.g., eggcrate) or an overall height of at least three inches if it is a non-convoluted overlay; and

(ii) Foam with a density and other qualities that provide adequate pressure reduction; and

(iii) Durable, waterproof cover;

(F) Codes E0184, E0186, E0187 and E0196 describe non-powered pressure reducing mattresses;

(G) A foam mattress (E0184) is characterized by all of the following:

(i) Foam height of five inches or greater;

(ii) Foam with a density and other qualities that provide adequate pressure reduction;

(iii) Durable, waterproof cover; and

(iv) Can be placed directly on a hospital bed frame;

(H) An air, water or gel mattress (E0186, E0187, E0196) is characterized by all of the following:

(i) Height of five inches or greater of the air, water, or gel layer (respectively);

(ii) Durable, waterproof cover; and

(iii) Can be placed directly on a hospital bed frame;

(I) Codes E0180, E0181, E0182, and A4640 describe powered pressure reducing mattress overlay systems (alternating pressure or low air loss) and are characterized by all of the following:

(i) An air pump or blower which provides either sequential inflation and deflation of air cells or a low interface pressure throughout the overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is 2 ½ inches or greater; and

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure overlays), and air pressure provide adequate client lift, reduce pressure and prevent bottoming out;

(J) Alternating pressure mattress overlays or low air loss mattress overlays are coded using codes E0180, E0181, E0182, and A4640;

(K) Code A4640 or E0182 may only be billed when they are provided as replacement components for a client-owned E0180 or E0181 mattress overlay system;

(L) A Column II code is included in the allowance for the corresponding Column I code when provided at the same time: Column I (Column II), E0180 (A4640, E0182), E0181 (A4640, E0182);

(b) Group 2:

(A) Code E0277 describes a powered pressure reducing mattress (alternating pressure, low air loss, or powered flotation without low air loss) which is characterized by all of the following:

(a) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the mattress;

(b) Inflated cell height of the air cells through which air is being circulated is five inches or greater;

(c) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure mattresses), and air pressure provide adequate patient lift, reduce pressure and prevent bottoming out;

(d) A surface designed to reduce friction and shear; and

(e) Can be placed directly on a hospital bed frame;

(B) Code E0193 describes a semi-electric or total electric hospital bed with a fully integrated powered pressure reducing mattress which has all the characteristics defined above;

(C) Code E0371 describes an advanced non-powered pressure-reducing mattress overlay which is characterized by all of the following:

(i) Height and design of individual cells which provide significantly more pressure reduction than a group 1 overlay and prevent bottoming out;

(ii) Total height of three inches or greater;

(iii) A surface designed to reduce friction and shear; and

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces;

(D) Code E0372 describes a powered pressure reducing mattress overlay (low air loss, powered flotation without low air loss, or alternating pressure) which is characterized by all of the following:

(i) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is 3 ½ inches or greater;

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure overlays), and air pressure to provide adequate patient lift, reduce pressure and prevent bottoming out; and

(iv) A surface designed to reduce friction and shear;

(E) Code E0373 describes an advanced non-powered pressure reducing mattress which is characterized by all of the following:

(i) Height and design of individual cells which provide significantly more pressure reduction than a group 1 mattress and prevent bottoming out;

(ii) Total height of five inches or greater;

(iii) A surface designed to reduce friction and shear;

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces; and

(v) Can be placed directly on a hospital bed frame;

(F) The only products that may be coded and billed using code E0371 or E0373 are those products for which a written coding determination specifying the use of these codes has been made by the statistical analysis durable medical equipment carrier (SADMERC);

(G) Alternating pressure mattresses and low air loss mattresses are coded using code E0277;

(H) Products containing multiple components are categorized according to the clinically predominant component (usually the topmost layer of a multi-layer product). For example, a product with three powered air cells on top of a three foam base would be coded as a powered overlay (code E0180 or E0181), not as a powered mattress (E0277).

(4) Documentation Requirements: Submit the following information with the prior authorization request:

(a) Initial Requests:

(A) For all pressure reducing support surfaces, other than a Group I for a completely immobile client or a Group 2 surface following a myocutaneous flap or skin graft:

(i) An order for each item requested, signed and dated by the attending physician;

ii) Documentation that supports conditions of coverage are met as specified in this rule;

(iii) A plan of care which has been established by the client's physician or home care nurse (by the RN resident care manager for a client in a nursing facility), which generally includes the following:

(I) Education of the client, if appropriate, and caregiver on the prevention and/or management of pressure ulcers;

(II) Regular assessment by a nurse, physician, or other licensed healthcare practitioner;

(III) Appropriate turning and positioning including the number of hours per 24-period that the client will utilize the support surface;

(IV) Appropriate wound care (for a stage II, III, or IV ulcer);

(V) Appropriate management of moisture/incontinence;

(VI) Nutritional assessment and intervention consistent with the overall plan of care by a licensed healthcare practitioner (by a registered dietitian for a client in a nursing facility) within the last 90 days;

(VII) Client's weight and height (approximation is acceptable, if unable to obtain);

(VIII) Description of all pressure ulcers, which includes number, locations, stages, sizes and dated photographs;

(iv) Lab reports, if relevant;

(v) Other treatments and products that have been tried and why they were ineffective; Interventions and goals for stepping down the intensity of support surface therapy;

(vi) For pressure ulcers on extremities, why pressure cannot be relieved by other methods;

(B) For a Group I surface for a completely immobile client:

(a) An order for each item requested, signed and dated by the attending physician;

(b) A plan of care which has been established by the client's physician or home care nurse (by the RN resident care manager for a client in a nursing facility), which generally includes the following:

(I) Education of the client, if appropriate, and caregiver on the prevention of pressure ulcers;

(ii) Regular assessment by a nurse, physician, or other licensed healthcare practitioner;

(iii) Appropriate turning and positioning including the number of hours per 24-period that the client will utilize the support surface;

(iv) Appropriate management of moisture/incontinence, if appropriate; (C) For a Group 2 surface following a myocutaneous flap or skin graft:

(i) An order for each item requested, signed and dated by the treating physician;

(ii) Operative report;

(iii) Hospital discharge summary;

(iv) Plan of care;

(F) Required documentation may not be completed by the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider or anyone in a financial relationship of any kind with the DMEPOS provider;

(G) Medical records must corroborate that all criteria in this rule are met when dispensing and billing for an item in Table 122-0400-1 and Table-122-400-2;

(H) Medical records must be kept on file by the DMEPOS provider and made available to DMAP upon request;

(b) Subsequent Requests: May be authorized contingent on progress towards healing:

(A) For all pressure reducing support surfaces, other than a Group I surface for a completely immobile client or a Group 2 surface following a myocutaneous flap or skin graft:

(i) Progress notes from the attending physician;

(ii) Description of all pressure ulcers, including progress towards healing, by a licensed healthcare practitioner (by the RN resident care manager for a client in a nursing facility) which includes number, locations, stages, sizes and dated photographs;

(iii) Current plan of care;

(iv) Any other relevant documentation;

(B) For a Group I surface for a completely immobile client:

(i) Progress notes from the attending physician;

(ii) Current plan of care;

(iii) Any other relevant documentation;

(C) For a Group 2 surface following a myocutaneous flap or skin graft:

(i) Progress notes from the attending physician;

(ii) Current plan of care;

(iii) Any other relevant documentation.

(4) **Table 122-0400-1** – Group 1.

(5) **Table 122-0400-2** – Group 2.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP

94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0475
Therapeutic Shoes for Diabetics

(1) Indications and Coverage:

(a) For each client, coverage of the footwear and inserts is limited to one of the following within one calendar year:

(A) One pair of custom-molded shoes (including inserts provided with such shoes) and two additional pair of inserts; or

(B) One pair of extra-depth shoes (not including inserts provided with such shoes) and three pairs of inserts.

(b) An individual may substitute modification(s) of custom molded or extra-depth shoes instead of obtaining one pair of inserts, other than the initial pair of inserts. The most common shoe modifications are:

(A) Rigid rocker bottoms;

(B) Roller bottoms;

(C) Metatarsal bars;

(D) Wedges;

(E) Offset heels.

(c) Payment for any expenses for the fitting of such footwear is included in the fee;

(d) Payment for the certification of the need for therapeutic shoes and for the prescription of the shoes (by a different practitioner from the one who certifies the need for the shoes) is considered to be included in the visit or consultation in which these services are provided;

(e) Following certification by the physician managing the client's systemic diabetic condition, a podiatrist or other qualified practitioner, knowledgeable in the fitting of the therapeutic shoes and inserts, may prescribe the particular type of footwear necessary.

(2) Documentation:

(a) The practitioner who is managing the individual's systemic diabetic condition documents that the client has diabetes and one or more of the following conditions:

(A) Previous amputation of the other foot, or part of either foot;

(B) History of previous foot ulceration of either foot;

(C) History of pre-ulcerative calluses of either foot;

(D) Peripheral neuropathy with evidence of callus formation of either foot;

(E) Foot deformity of either foot; or

(F) Poor circulation in either foot; and

(G) Certifies that the client is being treated under a comprehensive plan of care for his or her diabetes and that he or she needs therapeutic shoes.

(b) Documentation of the above criteria, may be completed by the prescribing practitioner or supplier but must be reviewed for accuracy of the information and signed and dated by the certifying physician to indicate agreement and must be kept on file by the DME supplier.

(3) **Table 122-0475**.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0500
Transcutaneous Electrical Nerve Stimulator (TENS)

(1) Indications and Limitations of Coverage and/or Medical Appropriateness: transcutaneous electrical nerve stimulator (TENS) (E0720, E0730) is a device which utilizes electrical current delivered through electrodes placed on the surface of the skin. A TENS unit decreases the client's perception of pain by inhibiting the transmission of afferent pain nerve impulses and/or stimulating the release of endorphins. A TENS unit must be distinguished from other electrical stimulators (e.g., neuromuscular stimulators) which are used to directly stimulate muscles and/or motor nerves.

(2) A TENS unit may be covered for the treatment of:

(a) Acute post-operative pain:

(A) Coverage is usually limited to 30 days from the day of surgery; and,

(B) Payment for more than one month is determined by individual consideration based upon supportive documentation provided by the attending physician; and,

(C) Payment is made only as a rental; and,

(D) Acute pain (less than three months duration) other than post-operative pain is not covered; or,

(b) Chronic, intractable pain:

(A) The pain has been present for at least three months; and,

(B) Other appropriate treatment modalities have been tried and failed; and,

(C) The presumed etiology of the pain is a type that is accepted as responding to TENS therapy. Examples of conditions for which a TENS unit are not considered to be medically appropriate are (not all-inclusive): headache, visceral abdominal pain, pelvic pain, and temporomandibular joint (TMJ) pain; and,

(D) The TENS unit must be used by the client on a trial basis for a minimum of one month (30 days), but not to exceed two months. The trial period is paid as a rental. The trial period must be monitored by the physician to determine the effectiveness of the TENS unit in modulating the pain;

(E) For coverage of a purchase, the physician must determine that the client is likely to derive significant therapeutic benefit from continuous use of the unit over a long period of time. The physician's records must document a reevaluation of the client at the end of the trial period, must indicate how often the client used the TENS unit, the typical duration of use each time, and the results.

(3) Documentation Requirements: Submit the following documentation from the attending or consulting physician with the prior authorization (PA) request:

(a) For both acute post-operative pain and chronic, intractable pain:

(A) A signed and dated order by the treating physician. The physician ordering the TENS unit must be the attending physician or a consulting physician for the disease or condition resulting in the need for the TENS unit; and,

(B) Documentation of multiple medications and/or therapies that have been tried and failed; and,

(C) A new order, when purchase is requested (after the required trial period). The initial date on

this order must not overlap the dates of the trial period.

(b) In addition, for a client with acute post-operative pain: date of surgery resulting in acute post-operative pain;

(c) In addition, for a client with chronic, intractable pain: location of the pain, the duration of time the client has had the pain, and the presumed etiology of the pain;

(d) For authorization of quantities of supplies greater than those described in this policy as the usual maximum amounts:

(A) Each request must include documentation supporting the medical appropriateness for the higher utilization; and,

(B) There must be clear documentation in the client's medical records corroborating the medical appropriateness of this amount.

(e) When ordering a 4 lead TENS unit, the client's medical record must document why 2 leads are insufficient to meet the client's needs;

(f) The Division of Medical Assistance Programs (DMAP) may request copies of the client's medical records that corroborate the order and any additional documentation that pertains to the medical appropriateness of items and quantities requested.

(4) Rental Guidelines: During the rental of a TENS unit, supplies for the unit are included in the rental allowance; there is no additional allowance for electrodes, lead wires, batteries, etc.

(5) Purchase Guidelines: If a TENS unit (E0720 or E0730) is purchased, the allowance includes lead wires and one month's supply of electrodes, conductive paste or gel (if needed), and batteries.

(6) Coding Guidelines:

(a) Separate allowance may be made for replacement supplies when they are medically appropriate and are used with a TENS unit that has been purchased and/or approved by DMAP;

(b) If 2 TENS leads are medically appropriate, then a maximum of one unit of Code A4595 would be allowed per month; if 4 TENS leads are necessary, a maximum of two units per month would be allowed;

(c) If the use of the TENS unit is less than daily, the frequency of billing for the TENS supply code should be reduced proportionally;

(d) There is no separate allowance for replacement electrodes (A4556), conductive paste or gel (A4558), replacement batteries (A4630), or a battery charger used with a TENS unit;

(e) Codes A4556 (Electrodes, [e.g., apnea monitor], per pair), A4558 (Conductive paste or gel), and A4630 (Replacement batteries, medically appropriate TENS owned by the client) are not valid for prior authorization. A4595 should be used instead;

(f) For code A4557, one unit of service is for lead wires going to two electrodes. If all the lead wires of a 4 lead TENS unit needed to be replaced, billing would be for two units of service;

(g) Replacement of lead wires (A4557) will be covered when they are inoperative due to damage and the TENS unit is still medically appropriate. Replacement more often than every 12 months is rarely medically appropriate;

(h) A TENS supply allowance (A4595) includes electrodes (any type), conductive paste or gel (if needed, depending on the type of electrode), tape or other adhesive (if needed, depending on the type of electrode), adhesive remover, skin preparation materials, batteries (9 volt or AA, single use or rechargeable), and a battery charger (if rechargeable batteries are used);

(i) Other supplies, including but not limited to the following, are not separately payable: adapters (snap, banana, alligator, tab, button, clip), belt clips, adhesive remover, additional connecting cable for lead wires, carrying pouches, or covers.

(j) Providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(7) **Table 122-0500**.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0520

Glucose Monitors and Diabetic Supplies

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover home blood glucose monitors and related diabetic supplies for clients with diabetes who can self-monitor blood glucose (SMBG) or be monitored with assistance;

(b) Coverage of home blood glucose monitors is limited to clients meeting all of the following conditions:

(A) The client has diabetes which is being treated by a practitioner; and

(B) The glucose monitor and related accessories and supplies have been ordered by a practitioner who is treating the client's diabetes; and

(C) The client or caregiver has successfully completed training or is scheduled to begin training in the use of the monitor, test strips, and lancing devices; and

(D) The client or caregiver is capable of using the test results to assure the client's appropriate glycemic control; and

(E) The device is designed for home use;

(c) Home blood glucose monitors with special features (E2100 or E2101) may be covered for clients who meet the basic coverage criteria (1)(b)(A)-(E) of this rule; and:

(A) The treating practitioner certifies that the client has a severe visual impairment (i.e., best corrected visual acuity of 20/200 or worse) requiring use of this special monitoring system; or

(B) For code E2101, the treating practitioner certifies that the client has an impairment of manual dexterity severe enough to require the use of this special monitoring system. Coverage of E2101 for a client with manual dexterity impairments is not dependent upon a visual impairment;

(d) If a glucose monitor is covered, lancets (A4259), blood glucose test reagent strips (A4253), glucose control solutions (A4256), and spring powered devices for lancets (A4258) may also be covered. Coverage limitations for these supplies are as follows:

(A) A4258 — only one spring powered device every six months;

(B) A4253 and A4259 —The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider of the test strips and lancets must maintain in its records the order from the treating practitioner. Before providing more test strips and lancets, the client must have nearly exhausted their supply. The amount of test strips and lancets covered are based on the needs of the client according to the following utilization guidelines:

(i) Up to 100 test strips and 100 lancets every three months for clients who are not currently being treated with insulin injections;

(ii) Up to 100 test strips and 100 lancets every month for clients who are currently being treated with insulin injections;

(iii) For clients under age 19 with Type I diabetes, up to 155 test strips and 155 lancets every month;

(iv) For clients with gestational diabetes:

(I) Insulin-treated: Up to 155 test strips and 155 lancets no longer than 60 days beyond the duration of the pregnancy;

(II) Non-insulin treated: Up to 124 test strips and 124 lancets no longer than 60 days beyond the duration of the pregnancy;

(v) Upon refills of quantities that exceed the utilization guidelines, the treating practitioner must have:

(I) Documented in the client's medical record the specific reason for the additional supplies for that particular client; and

(II) Seen the client and have evaluated their diabetes control within six months prior to ordering quantities that exceed the utilization guidelines; and

(III) Documented in the client's medical record, a specific narrative statement that adequately specifies the frequency at which the client is actually testing or a copy of the client's log; or there must be documentation in the DMEPOS provider's records, (e.g., a copy of the client's log) that the client is actually testing at a frequency that corroborates the quantity of supplies that have been dispensed. If the client is regularly using quantities of supplies that exceed the utilization guidelines, new documentation must be present at least every six months;

(e) DMEPOS providers must not dispense a quantity of supplies exceeding a client's expected utilization. DMEPOS providers should stay attuned to atypical utilization patterns on behalf of their clients and verify with the ordering practitioner that the atypical utilization is, in fact, warranted. Regardless of utilization, a DMEPOS provider must not dispense more than a three month quantity of glucose testing supplies at a time;

(f) Providers may contact the treating practitioner to renew an order; however, the request for renewal may only be made with the client's continued monthly use of testing supplies and only with the client's or caregiver's request to the DMEPOS provider for order renewal;

(g) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must specifically request refills of glucose monitor supplies before they are dispensed. The DMEPOS provider must not automatically dispense a quantity of supplies on a predetermined regular basis, even if the client has "authorized" this in advance;

(h) Purchase fee for a glucose monitor includes normal, low and high-calibrator solution/chips (A4256), a battery (A4233, A4234, A4235 or A4236) and a spring-powered lancet device (A4258);

(i) The following services are not covered:

(A) Peroxide (A4244), betadine or phisoHex (A4246, A4247);

(B) Alternate site blood glucose monitors;

(C) Blood glucose monitors and related supplies prescribed on an "as needed" basis;

(D) Blood glucose test or reagent strips that use a visual reading and are not used in a glucose monitor;

(E) Continuous glucose monitoring devices;

(F) Disposable gloves;

(G) Home blood glucose disposable monitors;

(H) Jet injectors;

(I) Insulin delivery devices and related supplies;

(J) Reflectance colorimeter devices used for measuring blood glucose levels in clinical settings;

(K) Urine test or reagent strips or tablets.

(2) Guidelines:

(a) Insulin-treated means that the client is receiving insulin injections to treat their diabetes. Insulin does not exist in an oral form and therefore clients taking oral medication to treat their diabetes are not insulin-treated;

(b) A severe visual impairment is defined as a best corrected visual acuity of 20/200 or worse in both eyes;

(c) An order renewal is the act of obtaining an order for an additional period of time beyond that previously ordered by the treating practitioner;

(d) An order refill is the act of replenishing quantities of previously ordered items during the time period in which the current order is valid;

(e) A4256 describes control solutions containing high, normal, and low concentrations of glucose that can be applied to test strips to check the integrity of the test strips. This code does not describe the strip or chip which is included in a vial of test strips and which calibrates the glucose monitor to that particular vial of test strips;

(f) For glucose test strips (A4253), 1 unit of service = 50 strips. For lancets (A4259), 1 unit of service = 100 lancets;

(g) DMEPOS providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(3) Documentation Requirements:

(a) For codes requiring prior authorization (PA), submit documentation which supports coverage criteria as specified in this rule are met;

(b) The order for home blood glucose monitors and/or diabetic testing supplies must include all of the following:

(A) All item(s) to be dispensed;

(B) The specific frequency of testing;

(C) The treating practitioner's signature;

(D) The date of the treating practitioner's signature;

(E) A start date of the order - only required if the start date is different than the signature date;

(c) A new order must be obtained when there is a change in the testing frequency;

(d) For E2100 or E2101 in a client with impaired visual acuity, submit documentation which includes a narrative statement from the practitioner that indicates the client's specific numerical visual acuity (e.g., 20/400) and that this result represents "best corrected" vision;

(e) For E2101 - clients with impaired manual dexterity, submit documentation which includes a narrative statement from the practitioner that indicates an explanation of the client's medical condition necessitating the monitor with special features;

(f) When requesting quantities of supplies which exceed utilization guidelines as specified in (1)(d)(B)(i)-(iv) (e.g., more than 100 blood glucose test strips per month for insulin-dependent diabetes mellitus), submit documentation supporting the medical appropriateness for the higher utilization as specified in (1)(d)(B)(v)(I)-(III) to the appropriate authorization authority for PA;

(g) Documentation which supports condition of coverage requirements for codes billed in this rule must be kept on file by the DMEPOS provider and made available to DMAP on request;

(h) The ICD-9 diagnosis code describing the condition that necessitates glucose testing must be included on each claim for the monitor, accessories and supplies;

(i) If the client is being treated with insulin injections, the KX modifier must be added to the code for the monitor and each related supply on every claim submitted;

(j) If the client is not being treated with insulin injections, the KS modifier must be added to the code for the monitor and each related supply on every claim submitted;

(k) DMEPOS providers are not prohibited from creating data collection forms in order to gather medically appropriate information; however, DMAP will not rely solely on those forms to prove the medical appropriateness of services provided;

(l) A client's medical records must support the justification for supplies dispensed and billed to DMAP.

(3) Procedure Codes: **Table 122-0520** — Diabetic Supplies

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0540

Ostomy Supplies

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover ostomy supplies for a client with a surgically created opening (stoma) to divert urine or fecal contents outside the body:

(a) Only one liquid barrier may be dispensed at a time:

(A) A liquid or spray (A4369); or

(B) Individual wipes or swabs (A5120);

(b) For a client with a continent stoma, only one of the following means to prevent/manage drainage may be covered on a given day:

(A) Stoma cap (A5055);

(B) Stoma plug (A5081); or

(C) Gauze pads (A6216);

(c) For a client with a urinary ostomy, only one of the following may be covered for drainage at night:

(A) Bag (A4357); or

(B) Bottle (A5102);

(d) Provision of ostomy supplies for a client is limited to a three month supply;

(e) The following services are not covered:

(A) Ostomy clamps;

(B) Ostomy supplies when a client is in a covered home health episode;

(C) Pouch covers.

(2) Documentation Requirements:

(a) For miscellaneous ostomy supplies (A4421) ,submit documentation which supports coverage criteria as specified in this rule are met to the responsible unit for prior authorization; (b) Medical records which support conditions of coverage as specified in this rule are met must be kept on file by the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request;

(c) A client's medical records must support the justification for supplies billed to DMAP including when a greater quantity of supplies than the amounts listed in this rule are dispensed (e.g., client has more than one ostomy).

(3) **Table 122-0540-1**, Maximum Quantity of Supplies – Monthly Basis.

(4) **Table 122-0540-2**, Maximum Quantity of Supplies – 6-Month Basis.

(5) **Table 122-0540-3**, Faceplate Systems.

(6) **Table 122-0540-4** Procedure Codes.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0658

Gradient Compression Stockings

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover gradient compression stockings for the following indications:

(A) Ulceration due to chronic venous insufficiency;

(B) Varicose veins with ulcer or inflammation;

(C) Phlebitis/thrombophlebitis;

(D) Deep vein thrombosis (DVT) prophylaxis during pregnancy and postpartum, or immobilization due to surgery, trauma or debilitation;

(E) Covered lymphedema conditions when an ulcer is present; and

(F) Edema following a covered surgery, fracture, burns or other trauma;

(b) A gradient compression stocking may be covered when it is used to secure a primary dressing over an open venous stasis ulcer which is currently being treated by a practitioner and requires medically necessary debridement, and when the gradient stocking delivers compression less than 50 mmHg;

(c) On initial dispensing, two pair of gradient compression stockings may be provided;

(d) Any subsequent dispensing within the same calendar year requires detailed medical documentation (e.g., change in size, unusual drainage, wear that renders them ineffective);

(e) The following services are not covered:

(A) Antiembolism (surgical or TED) stockings (HCPCS codes A4490-A4510);

(B) Garter belts (A6544);

(C) Gradient compression stockings; below knee, 18-30 mmHg (A6530);

(D) Gradient compression stockings, not otherwise classified (A6549);

(E) Prevention of stasis ulcers;

(F) Prevention of the reoccurrence of stasis ulcers that have healed;

(G) Stockings for the following conditions:

(i) Solely for the purpose of air travel;

(ii) Treatment of lymphedema in the absence of ulcers;

(iii) Venous insufficiency without stasis ulcers;

(H) Support hose (pantyhose).

(2) Documentation Requirements: Medical records that support the conditions of coverage are met, as specified in this rule, must be kept on file by the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request.

(3) Table 122-0658.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0660
Orthotics and Prosthetics

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover some orthotics and prosthetics for covered conditions;

(b) Use the current Healthcare Common Procedure Coding System (HCPCS) Level II Guide for current codes and descriptions;

(c) For adults, follow Medicare current guidelines for determining coverage;

(d) For clients under age 19, the prescribing practitioner must determine and document medical appropriateness;

(e) The hospital is responsible for reimbursing the provider for orthotics and prosthetics provided on an inpatient basis;

(f) Evaluations, office visits, fittings and materials are included in the service provided;

(g) Evaluations will only be reimbursed as a separate service when the provider travels to a client's residence to evaluate the client's need;

(h) L1500, L1510 and L1520 are not covered for a client residing in a nursing facility;

(i) See Division 129, Speech-Language Pathology, Audiology and Hearing Aid Services for rule information on tracheostomy speaking valves.

(2) Documentation Requirements:

(a) For services that require prior authorization (PA): Submit documentation for review which supports conditions of coverage as specified in this rule are met;

(b) For services that do not require PA: Medical records which support conditions of coverage as specified in this rule are met must be on file with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request.

(3) **Table 122-0660-1**: Codes requiring PA.

(4) **Table 122-0660-2**: Exclusions of Coverage.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

410-122-0720
Pediatric Wheelchairs

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a pediatric wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the pediatric wheelchair that is being requested;

(D) Use of a pediatric wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested pediatric wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested pediatric wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a pediatric wheelchair for any of the following situations:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a pediatric wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a pediatric wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of pediatric wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a pediatric wheelchair;

(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair (for one month's rental of a wheelchair). See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing;

(c) A pediatric tilt-in-space wheelchair (E1231- E1234) may be covered when a client meets all of the following conditions:

(A) A standard base with a reclining back option will not meet the client's needs;

(B) Is dependent for transfers;

(C) Spends a minimum of six hours a day in a wheelchair;

(D) The plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(E) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(d) One month's rental for a manual pediatric tilt-in-space wheelchair (E1231-E1234) may be covered for a client residing in a nursing facility when all of the following conditions are met:

(A) The anticipated nursing facility length of stay is 30 days or less;

(B) The conditions of coverage for a manual tilt-in-space wheelchair as described in (1)(c)(A)-(E) are met;

(C) The client is expected to have an ongoing need for this same wheelchair after discharge to the home setting;

(D) Coverage is limited to one month's rental;

(e) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(f) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(g) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(h) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair; Power mobility devices and related options and accessories must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Supplier (ATS) or Assistive Technology Practitioner (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client;

(i) A Group 5 (Pediatric) power wheelchair (PWC) with Single Power Option (K0890) or with Multiple Power Options (K0891) may be covered when:

(j) The coverage criteria for a PWC (see 410-122-0325, Motorized/Power Wheelchair Base) are met; and

(ii) The client is expected to grow in height; and

(iii) Either of the following criteria is met:

(I) The Group 2 Single Power Option in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(C)(i)(I-II); or

(II) Multiple Power Options in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(D)(i)(I-II);

(iv)The delivery of a PWC must be within 120 days following completion of the face-to-face examination with the physician;

(v) A PWC may not be ordered by a podiatrist;

(k) A pediatric wheelchair for use only outside the home is not covered;

(l) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing.

(2) Coding Guidelines:

(a) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(b) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(c) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(d) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229;

(e) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified;

(f) Pediatric seating system codes E2291-E2294 may only be billed with pediatric wheelchair base codes;

(g) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Functional Mobility Evaluation:

(A) Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) providers must submit medical documentation which supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned pediatric wheelchairs;

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a physical therapist (PT), occupational therapist (OT) or treating physician. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the DMEPOS provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician and PT or OT.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a PT, OT or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a PT, OT or treating physician about the following elements that support coverage criteria are met for a pediatric wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, pediatric wheelchair, power-operated vehicle (POV), or PWC and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a PT, OT or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a pediatric wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options, including growth capabilities; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All HCPCS codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician, identifying the specific type of pediatric wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific pediatric wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority; and

(d) For a PWC request: See 410-122-0325, Motorized/Power Wheelchair Base for documentation requirements; and

(e) Any additional documentation that supports indications of coverage are met as specified in this policy; and

(f) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;

(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(g) The above documentation must be kept on file by the DMEPOS provider; and

(h) Documentation that the coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request; and

(i) For PWC's furnished on a rental basis with dates of services prior to October 1, 2006, use code E1239 as appropriate.

(4) **Table 122-0720** — Pediatric Wheelchairs.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08

Rule Caption: July 2008 revisions to clarify text.
Adm. Order No.: DMAP 18-2008
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Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-123-1000, 410-123-1260, 410-123-1540, 410-123-1670
Subject: The Dental Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to certain clients. DMAP amended rules to clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance. This will help facilitate provider compliance with eligibility, service coverage and limitations and billing requirements. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-123-1000
Providing Services and Billing

(1) Providers are responsible to verify client eligibility and must do so before providing any service or billing the Division of Medical Assistance Programs (DMAP) or any Oregon Health Plan (OHP) Prepaid Health Plan (PHP).DMAP will not pay for services provided to an ineligible client even if services were authorized. Refer to General Rules OAR 410-120-1140 (Verification of Eligibility) for details.

(2) Providers must follow DMAP rules in effect on the date of service. All DMAP rules are intended to be used in conjunction with the DMAP General Rules (chapter 410, division 120), the OHP Administrative Rules (chapter 410, division 141), Pharmaceutical Services Rules (chapter 410, division 121) and other relevant DMAP OARs applicable to the service provided, where the service is delivered, and the qualifications of the person providing the service including the requirement for a signed provider enrollment agreement.

(3) Third Party Resources: A third party resource (TPR) is an alternate insurance resource, other than DMAP, available to pay for medical/dental services and items on behalf of Medical Assistance Program clients. Any alternate insurance resource must be billed before DMAP or any OHP PHP can be billed. Indian Health Services or Tribal facilities are not considered to be a TPR pursuant to General Rules (OAR 410-120-1280).

(4) Fabricated Prosthetics: If a dentist or denturist provides an eligible client with fabricated prosthetics that require the use of a dental laboratory, and the fabrication extends beyond the client's DMAP eligibility, the dentist/denturist should use the date of final impression as the date of service, but also indicate the date of delivery. The date of delivery must be within 45 days of the date of the final impression. This is the only exception to General Rules (OAR 410-120-1280). All other services must be billed using the date the service was provided.

(5) Treatment Plans: Being consistent with established dental office protocol and the standard of care within the community, scheduling of appointments is at the discretion of the dentist. The agreed upon treatment plan established by the dentist and patient will establish appointment sequencing. Eligibility for medical assistance programs does not entitle a client to any services or consideration not provided to all clients.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08

410-123-1260
Dental Exams, Diagnostic and Procedural Services

(1) Refer to OAR 410-123-1160 for information regarding dental services requiring prior authorization (PA) and refer to Table 123-1260-1 (in this rule) for requirements to submit surgical reports as shown by "BR" (By Report). Procedure codes listed in Table 123-1260-1 are subject to change by the American Dental Association (ADA) without notification.

(2) Changes to services funded on the Oregon Health Services Commission (HSC) Prioritized List of Health Services are effective on the date of the List change, but will not be reflected in OARs 410-123 until they have gone through the Division of Medical Assistance Programs (DMAP) rule filing process. .

(3) The client's records must include documentation to support the appropriateness of the service and level of care rendered.

(4) DMAP will not reimburse for dental services that are not dentally appropriate as defined in OAR 410-123-1060, or are for the convenience of the client or practitioner.

(5) Restorative, periodontal and prosthetic treatments must be consistent with the prevailing standard of care and documentation must be included in the client's charts to support the treatment. Restorative, periodontal and prosthetic treatments are limited as follows:

(a) When prognosis is unfavorable;

(b) When treatment is impractical;

(c) Until rampant progression of caries is arrested;

(d) Until a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic;

(e) A lesser-cost procedure would achieve the same ultimate result; or

(f) The treatment has specific limitations outlined in this rule.

(6) Exams:

(a) DMAP will reimburse exams (billed as D0120, D0150, D0160 or D0180) by the same practitioner once every twelve months;

(b) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(c) Oral exams are not covered when provided by a medical practitioner unless the practitioner is an oral surgeon.

(7) Radiographs:

(a) DMAP will reimburse for routine radiographs once every 12 months;

(b) DMAP will reimburse for panoramic (D0330) or intraoral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(c) Clients must be a minimum of six years old for billing code D0210. For clients under age six, radiographs may be billed separately every 12 months as follows:

(A) D0220 — once;

(B) D0230 — a maximum of five times;

(C) D0270 — a maximum of twice, or D0272 once;

(d) The minimum standards for reimbursement of intra-oral complete series are:

(A) For clients age six through 11 — a minimum of 10 periapicals and two bitewings for a total of 12 films;

(B) For clients ages 12 and older — a minimum of 10 periapicals and four bitewings for a total of 14 films;

(e) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), DMAP will reimburse for the complete series;

(f) DMAP will reimburse bitewing radiographs for routine screening once every 12 months;

(g) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(h) If DMAP determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(i) DMAP will reimburse a maximum of six radiographs for any one emergency;

(j) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(k) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

(8) Preventive Services:

(a) Prophylaxis — Limited to once every 12 months. Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care:

(A) D1110 (Prophylaxis — Adult) — Use for clients age 14 and up; and

(B) D1120 (Prophylaxis — Child) — Use for clients age 0 through 13;

(b) Topical Fluoride Treatment — Limited to once every 12 months. Additional topical fluoride treatments may be available, up to a total of 4 treatments within a 12-month period, when high-risk conditions or oral

health factors are clearly documented in chart notes for the following clients who:

(A) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(B) Are pregnant with a high-risk oral condition(s) limited to periodontal disease or rampant caries;

(C) Have physical disabilities that cannot perform adequate, daily oral health care;

(D) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care;

(E) Are six years old or younger with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

(c) Topical fluoride varnish treatments by medical practitioners:

(A) Are covered as part of a medical visit for those high-risk young children that do not have access to a dental practitioner;

(B) Are limited to children six years old and younger in accordance with the limitations detailed in OAR 410-123-1260(8)(b) herein;

(C) Are billed on the CMS-1500 form, using the appropriate CDT code (D1206 — Topical Fluoride Varnish);

(D) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(d) Sealants:

(A) Are covered for permanent molars only for children 15 or younger;

(B) Are limited to one treatment per tooth every five years except for visible evidence of clinical failure;

(e) Topical fluoride varnish and/or sealants by Dental Hygienists in limited access locations:

(A) For clients who receive services on an open-card/fee-for-service basis:

(i) Are reimbursed by DMAP based on the physician fee schedule in accordance with the limitations detailed in OAR 410-123-1260(8)(b) and (d); and

(ii) As the CDT codebook specifies that the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, DMAP does not reimburse dental exams when furnished by a Dental Hygienist (with or without a limited access permit);

(B) For clients enrolled in a DCO, it is the responsibility of the Dental Hygienist to coordinate all dental services with the client's Dental Care Organization (DCO) prior to providing services;

(C) Regardless of whether a client is receiving services fee-for-service or through a DCO, if provided through a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC), refer to OAR 410 Division 147 for details;

(f) Space Management — Removable space maintainers will not be replaced if lost or damaged.

(9) Tobacco Cessation:

(a) For dental services use CDT code D1320 on an ADA claim form when billing for tobacco cessation services when the following brief counseling is provided:

(A) Ask patients about their tobacco-use status at each visit and record information in the chart;

(B) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco;

(C) Assess the patient's current level of readiness to quit;

(D) Assist patients, for example by providing self-help cessation materials, recommending tobacco cessation therapy products through the patient's primary care physician (e.g. nicotine patches, oral medications intended for tobacco cessation treatment and gum) and encouraging the setting of a quit date; and

(E) Arrange to follow up with patients at their next office visit and provide local tobacco-use cessation resources, if needed;

(b) A maximum of 10 services is allowed within a three-month period;

(c) For medical services tobacco cessation other than dental services, follow criteria outlined in OAR 410-130-0190.

(10) Restorations — Amalgam and Composite:

(a) Payment for restorations is limited to the maximum restoration fee of four surfaces per tooth. Refer to the ADA Current Dental Terminology (CDT) codebook for definitions of restorative procedures;

(b) All surfaces must be combined and billed one line per tooth using the appropriate code. For example, tooth #30 has a buccal amalgam and a MOD amalgam -- bill MOD, B, using code D2161;

(c) Payment for an amalgam or composite restoration and a crown on the same tooth will be denied;

(d) Payment is made for a surface once in each treatment episode regardless of the number or combination of restorations;

(e) Payment for occlusal adjustment and polishing of the restoration is included in the restoration fee;

(f) Posterior composite restorations will be paid at the same rate as amalgam restorations;

(g) Replacement of posterior composite restorations is limited to once every five years.

(11) Crowns:

(a) Acrylic Heat or Light Cured Crowns (D2799 and D2970) — allowed for anterior permanent teeth only;

(b) Prefabricated Plastic Crowns (D2932) — allowed for anterior teeth only, permanent or primary;

(c) Stainless steel crowns (D2930/D2931) — allowed for posterior teeth, permanent or primary; (d) Permanent crowns (Resin-based composite - D2710 and Porcelain fused to metal (PFM) - D2751 and D2752) -- allowed only for anterior permanent teeth if dentally appropriate and with the following requirements:

(A) Clients must be 16 years or older;

(B) Radiographs required; history, diagnosis, and treatment plan may be requested;

(C) Rampant caries should be arrested and a period of oral hygiene demonstrated before prosthetics (including a PFM crown) are proposed; and

(D) PFM crowns must meet the following additional requirements:

(i) Will be used only if no other restoration option will restore function. Other restoration options should be attempted first with clinical failure documented. If the dentist determines no other restoration option can be used, written documentation in the client's chart must support that finding;

(ii) Will be used only if client has documented stable periodontal status with pocket depths within 1 — 3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;

(iii) The crown has a favorable long-term prognosis; and

(iv) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(e) Payment for preparation of the gingival tissue is included in the fee for the crown;

(f) Payment for retention pins is limited to four per tooth;

(g) Crowns are covered only when there is significant loss of clinical crown and no other restoration will restore function. The following is not covered:

(A) Endodontic therapy alone (with or without a post) is not covered;

(B) Aesthetics (cosmetics);

(h) Crown replacement is limited to once every five years per tooth and only when dentally appropriate. Exceptions to this limitation may be made for crown damage due to acute trauma, based on the following factors:

(A) Extent of crown damage;

(B) Extent of damage to other teeth or crowns;

(C) Extent of impaired mastication;

(D) Tooth is restorable without other surgical procedures; and

(E) If loss of tooth would result in coverage of removable prosthetic;

(i) Crowns are not covered in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(j) Crowns will be covered if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures.

(12) Endodontics:

(a) Pulp Capping:

(A) Direct and indirect pulp caps are included in the restoration fee; no additional payment will be made for clients with the OHP Plus Benefit Package;

(B) Direct pulp caps are covered as a separate service for clients with the OHP Standard benefit coverage package because restorations are not a covered benefit under this benefit package;

(b) Endodontic Therapy:

(A) Endodontics is covered only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(B) Retreatment is not covered for bicuspid or molars;

(C) Retreatment is limited to anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(D) Separate reimbursement for open-and-drain as a palliative procedure is not allowed when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(E) The client's record must include documentation to support the appropriateness of services and level of care rendered;

(F) Root canal therapy is not covered for third molars;

(G) Endodontic Therapy is covered if the tooth is restorable within the OHP benefit coverage package;

(c) Endodontic Therapy on Permanent Teeth — Apexification is limited to a maximum of five treatments on permanent teeth only.

(13) Periodontics:

(a) D4210 and D4211 — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia;

(b) D4240, D4241, D4260 and D4261 — allowed once every three years unless there is a documented medical/dental indication;

(c) D4341 and D4342 — allowed once every two years. A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances. Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater;

(d) D4910 — limited to following periodontal therapy and allowed once every six months. For further consideration of more frequent periodontal maintenance benefits, office records must clearly reflect clinical indication, i.e., chart notes, pocket depths and radiographs;

(e) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(f) Surgical procedures include six months routine postoperative care;

(g) Note: DMAP will not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4260 (Osseous surgery, including flap entry and closure — four or more contiguous teeth or bounded teeth spaces per quadrant);

(F) D4261 (Osseous surgery, including flap entry and closure — one to three contiguous teeth or bounded teeth spaces per quadrant);

(G) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(H) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(I) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(J) D4910 (Periodontal maintenance).

(14) Removable Prosthodontics:

(a) Removable cast metal prosthodontics and full dentures are limited to clients 16 years or older;

(b) Adjustments to removable prosthodontics during the six-month period following delivery to clients are included in the fee;

(c) Replacement:

(A) Replacement of dentures and partials, when it cannot be made clinically serviceable by a less costly procedure (reline, rebase, repair, tooth replacement, etc.), is limited to once every five years and only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every five years, but only when dentally appropriate;

(B) The limitation of once every five years applies to the client regardless of whether the denture or partial was received while the client was on the Oregon Health Plan and regardless of Dental Care Organization (DCO) or Fee-for-Service (FFS) enrollment status. This includes clients that move from FFS to DCO, DCO to FFS, or DCO to DCO. For example: a client receives full dentures on February 1, 2007, while FFS and a year later enrolls in a DCO. The client would not be eligible for another full denture until February 2, 2012, regardless of DCO or FFS enrollment;

(C) Replacement of partial dentures with full dentures is payable five years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant replacement;

(d) Relines:

(A) Reline of complete or partial dentures is allowed once every two years;

(B) Exceptions to this limitation may be made under the same conditions warranting replacement;

(C) Laboratory relines are not payable within five months after placement of an immediate denture;

(e) Tissue Conditioning:

(A) Tissue conditioning is allowed once per denture unit in conjunction with immediate dentures;

(B) One tissue conditioning is allowed prior to new prosthetic placement;

(f) Cast Partial Dentures:

(A) Cast partial dentures will not be approved if stainless steel crowns are used as abutments;

(B) Cast partial dentures must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) Teeth to be replaced and teeth to be clasped are to be noted in the "remarks" section of the form;

(g) Denture Rebase Procedures:

(A) Rebase should only be done if a reline will not adequately solve the problem. Rebase is limited to once every three years;

(B) Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant rebasing;

(h) Laboratory Denture Reline Procedures — Limited to once every two years.

(15) Maxillofacial Prosthetics:

(a) For clients enrolled in managed care, maxillofacial prosthetics are to be billed using CPT or HCPCS coding on a CMS-1500 to the client's medical managed care organization (FCHP). Provision of maxillofacial prosthetics is included in the FCHP capitation and is not the DCO's responsibility;

(b) For fee-for-service clients, bill DMAP using CPT or HCPCS codes on a CMS-1500. Payment is based on the physician fee schedule;

(c) Table 123-1260-1 lists the maxillofacial prosthetics procedures as "medical."

(16) Oral Surgery:

(a) Oral surgical procedures that are directly related to the teeth and supporting structures that are not due to a medical condition must be billed on an ADA claim form, using CDT codes;

(b) Oral surgical services that are included in a dental plan benefit package which are performed in a dental office setting (including an oral surgeon's office):

(A) Do not require prior authorization (PA), and include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(B) Are billed on an American Dental Association (ADA) dental claim form, using CDT codes, except when the procedures are a result of a medical condition (i.e., fractures, cancer) which must be billed using a CMS-1500 claim form with the appropriate American Medical Association (AMA) CPT procedure/ICD-9 diagnosis codes;

(C) For clients enrolled in a Dental Care Organization (DCO), the DCO is responsible for payment of those services in the dental plan package;

(c) Oral surgical services performed in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting:

(A) Oral surgical services in a hospital setting and related anesthesia services require PA;

(B) If the hospital setting oral surgical procedures are directly related to the teeth and supporting structures, the procedures must be billed on an ADA claim form, using CDT codes;

(C) If the services requiring hospital dentistry are the result of a medical condition/diagnosis (i.e., fracture, cancer), use appropriate AMA CPT

procedure codes/ICD-9 diagnosis codes and bill procedures on a CMS-1500 claim form;

(D) For clients enrolled in a Fully Capitated Health Plan (FCHP), the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a Physician Care Organization (PCO), the outpatient facility charge (including ambulatory surgical centers) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410 — division 130 for more information;

(d) All codes listed as "By Report" require an operative report;

(e) Payment for tooth reimplantation is covered only in cases of traumatic avulsion where there are good indications of success;

(f) Biopsies collected are reimbursed by the dental plan. Reimbursement for laboratory services of biopsies must be arranged through the medical plan;

(g) Surgical excisions of soft tissue lesions (D7410 – D7415) are not covered services;

(h) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(i) Surgical Extractions:

(A) Includes local anesthesia and routine post-operative care;

(B) Surgical removal of impacted teeth or removal of residual tooth roots are limited to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) Alveoloplasty in conjunction with extractions (D7310 and D7311) are not services that are covered separately from the extraction. Alveoplasty not in conjunction with extractions (D7320) is a covered service;

(j) Table 123-1260-1 in this rule lists CDT procedure codes on the Health Services Commission's (HSC) Prioritized List of Health Services (List) that also have CPT medical codes. The procedures listed as "medical" on the table may be covered as medical procedures, the table may not be all-inclusive of every dental code that has a corresponding medical code:

(A) If billed as a medical procedure in accordance with these rules, the procedure must be billed on a CMS-1500, using CPT coding. Refer to the Medical-Surgical administrative rules for additional information (OAR chapter 410 — division 130);

(B) If a client is enrolled in a Fully Capitated Health Plan (FCHP) or a Physician Care Organization (PCO), it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered.

(17) Orthodontia:

(a) Orthodontia services and extractions are limited to eligible clients:

(A) With the ICD-9-CM diagnosis of cleft palate with cleft lip; and

(B) When orthodontia treatment began prior to 21 years of age; or

(C) When surgical corrections of cleft palate with cleft lip was not completed prior to age 21;

(b) Prior authorization (PA) is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontia treatment for cleft palate/cleft lip is evaluated as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). Each phase is reimbursed individually (separately);

(f) Payment for orthodontia will be made in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to DMAP any unused amount of payment, after applying the following formula: Total payment minus $300.00 (for Banding) multiplied by the percentage of treatment remaining;

(g) The length of the treatment plan from the original request for authorization will be used to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment no refund will be required even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8999 — PA required.

(18) Anesthesia:

(a) General anesthesia or IV sedation is to be used only for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(b) General anesthesia or IV sedation is paid using codes D9220 or D9241, respectively, for the first 30 minutes and using codes D9221 or D9242, respectively, for each additional 15-minute period, up to three hours on the same day of service. When using codes D9221 or D9242, use care when entering quantity. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(c) Nitrous oxide is paid per date of service, not by time;

(d) Oral pre-medication anesthesia for conscious sedation:

(A) Limited to clients through 12 years of age;

(B) Limited to four times per year;

(C) Monitoring and nitrous oxide included in the fee; and

(D) Use of multiple agents is required to receive payment;

(e) Upon request, providers must submit to DMAP a copy of their permit to administer anesthesia, analgesia and/or sedation;

(f) Anesthesia — For the purpose of Title XIX and Title XXI, code D9630 is limited to those oral medications used during a procedure and is not intended for "take home" medication.

(19) Office visit for observation — Code D9430 is limited to three visits per year. **Table 123-1260-1**

[ED. NOTE: Tables are available from the Agency.]

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08

410-123-1540

Citizen/Alien-Waived Emergency Medical

(1) The Citizen/Alien-Waived Emergency Medical (CAWEM) program provides treatment of emergency medical conditions, including delivery of newborns. CAWEM is defined in OAR 410-120-0000 and further explained in OAR 410-120-1210 of the Division of Medical Assistance Programs (DMAP) General Rules.

(2) People covered under the CAWEM program are NOT Oregon Health Plan clients. They DO NOT receive the Basic Benefit Package and ARE NOT enrolled into managed care plans.

(3) Refer to General Rules 410-120-1140 (Verification of Eligibility) for details regarding verifying client eligibility for services.

(4) Emergency services provided for anyone eligible under the CAWEM program should continue to be billed directly to DMAP.

(5) Dental services provided outside of an Emergency Department Hospital setting are not covered for CAWEM clients. See OAR 410-120-1210.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08

410-123-1670

OHP Standard Limited Emergency Dental Benefit

(1) The Oregon Health Plan (OHP) Standard Limited Emergency Dental benefit is intended to provide services requiring immediate treatment and is not intended to restore teeth.

(2) Procedures listed for the OHP Standard Benefit Package in OAR 410-123-1260 (Table 123-1260-1) are covered but are limited to treatment for conditions such as:

(a) Acute infection;

(b) Acute abscesses;

(c) Severe tooth pain;

(d) Tooth re-implantation when clinically appropriate; and

(e) Extraction of teeth, limited only to those teeth that are symptomatic.

(3) Hospital Dentistry is not a covered benefit for the OHP Standard population, with the following exceptions:

(a) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate); or

(b) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate).

(4) Any limitations or prior authorization requirements on services listed in OAR 410-123-1260 or 410-123-1160 will also apply to services in the OHP Standard benefit.

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08

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Subject: The Hospital Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended rules listed above as follows: OAR 410-125-0000, to reference General Rules 410-120 for client eligibility information; 410-125-0220, 410-125-0360, 410-125-0400, 410-125-0600 and 410-125-0720, to comply with CMA billing form name changes; 410-125-0047, to update CMS ICD-9 code additions and deletions without intent of coverage changes; 410-125-0080 to update prior authorization of CPT codes as required by the Department; and 410-125-0141 to restore cost of providing direct and indirect medical education to teaching hospitals. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0000
Determining When the Patient Has Medical Assistance

(1) The Medical Card gives the client's name as listed with the Oregon Health Plan (OHP) and their alpha-numeric prime number.

(2) Eligibility may change on a monthly basis. In some instances, eligibility will change during the month. Eligibility should be verified each time services are provided in order to assure that the client is eligible for date(s) of service. For ways to verify client eligibility see General Rules (OAR 410-120-1140).

Stat. Auth.: ORS 184.750, 184.770, 411 & 414

Stats. Implemented: ORS 409.010

Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0150; HR 42-1991, f. & cert. ef. 10-1-91; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0047
Limited Hospital Benefit for the OHP Standard Population

(1) The Oregon Health Plan (OHP) Standard population has a limited hospital benefit for urgent or emergent inpatient and outpatient services. Inpatient and outpatient hospital services are limited to the ICD-9 CM Diagnoses codes listed on the 'Standard Population Limited Hospital Benefit Code List.

(2) The limited hospital benefit includes the ICD-9 CM codes listed in the OHP Standard Population — Limited Hospital Benefit Code List. This rule incorporates by reference the OHP Standard Population — Limited Hospital Benefit Code List. This list includes diagnoses requiring prior authorization indicated by the letters for prior authorization (PA) next to the code number. The archived and the current list is available on the web site (www.dhs.state.or.us/policy/healthplan/guides/hospital), or contact the Division of Medical Assistance Programs (DMAP) for a hardcopy. The document dated:

(a) August 1, 2004, is effective for dates of service August 1, 2004 through August 31, 2004;

(b) September 1, 2004, is effective for dates of service September 30, 2004 through June 30, 2008; and

(c) July 1, 2008 is effective for dates of service July 1, 2008 forward.

(3) DMAP will reimburse hospitals for inpatient (diagnostic and treatment) services, outpatient (diagnostic and treatment services) and emergency room (diagnostic and treatment) based on the following:

(a) For treatment, the diagnosis must be listed in the OHP Standard Population — Limited Hospital Benefit Code List;

(b) For treatment the diagnosis must be above the funding line on the Prioritized List of Health Services (HSC List) (OAR 410-141-0520);

(c) The diagnosis (ICD-9) must pair with the treatment (CPT code); and

(d) Prior authorization (PA) must be obtained for codes indicated in the OHP Standard Population — Limited Hospital Benefit Code List. PA request should be directed to the DMAP contracted Quality Improvement Organization (QIO) and will follow the present (current) PA process. PAs must be processed as expeditiously as the client's health condition requires;

(e) Medically appropriate services required to make a definitive diagnosis are a covered benefit.

(4) Some non-diagnostic outpatient hospital services (e.g. speech, physical or occupational therapy, etc.) are not covered benefits for the OHP Standard population (see the individual program for coverage) in the hospital setting.

(5) For benefit implementation process and PA requirements for the client enrolled in a Fully Capitated Health Plan (FCHP) and/or Mental Health Organization (MHO), contact the client's FCHP or MHO. The FCHP and/or MHO may have different requirements than DMAP.

Stat. Auth.: ORS 414.019, 414.025 & 414.065

Stats. Implemented: ORS 414.065

Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 52-2004(Temp), f. & cert. ef. 9-1-04 thru 2-15-05; OMAP 84-2004, f. & cert. ef. 11-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0080
Inpatient Services

(1) Elective (not urgent or emergent) admission:

(a) Fully Capitated Health Plan (FCHP) and Mental Health Organization (MHO) clients — contact the client's MHO or FCHP (phone number is on the client's Medical Care Identification). The health plan may have different prior authorization requirements than the Division of Medical Assistance Programs (DMAP);

(b) Medicare Clients — DMAP does not require prior authorization for inpatient services provided to clients with Medicare Part A or B coverage;

(c) For DMAP clients covered by the Oregon Health Plan (OHP) Plus Benefit Package:

(A) Hospital admissions for any of the medical and surgical procedures shown in Table 125-0080-1 require prior authorization, unless they are urgent or emergent;

(B) For prior authorization contact the DMAP contracted Quality Improvement Organization (QIO) unless otherwise indicated in Table125-0080-1;

(d) DMAP clients covered by the OHP Standard Benefit Package have a limited hospital benefit package. Specific coverage and prior authorization requirements are listed in the DMAP Hospital Services Supplemental Information or at DMAP Web site http://www.dhs.state.or.us/healthplan/guides/hospital (referenced in OAR 410-125-0047).

(2) Transplant services:

(a) Complete rules for transplant services are in the DMAP Transplant Services rules (OAR 410 division 124);

(b) Clients are eligible for transplants covered by the Health Services Commission's Prioritized List of Health Services. See the Transplant Services rules for criteria. For clients enrolled in a FCHP, contact the plan for authorization. Clients not enrolled in an FCHP, contact the DMAP Medical Director's office.

(3) Out-of-state non-contiguous hospitals:

(a) All non-emergent/non-urgent services provided by hospitals more than 75 miles from the Oregon border require prior authorization;

(b) Contact the DMAP Medical Director's office for authorization for clients not enrolled in a Prepaid Health Plan (PHP). For clients enrolled in a PHP, contact the plan.

(4) Out-of-state contiguous hospitals: services provided by contiguous-area hospitals, less than 75 miles from the Oregon border, are prior authorized following the same rules and procedures as in-state providers.

(5) Transfers to another hospital:

(a) Transfers for the purpose of providing a service listed in Table 125-0080-1, e.g., inpatient physical rehabilitation care, require prior authorization — contact the DMAP contracted QIO;

(b) Transfers to a skilled nursing facility, intermediate care facility or swing bed — contact Seniors and People with Disabilities (SPD). SPD reimburses nursing facilities and swing beds through contracts with the facilities. For FCHP clients — transfers require authorization and payment (for first 20 days) from the FCHP;

(c) Transfers to the same or lesser level of inpatient care — DMAP will cover transfers, including back transfers, which are primarily for the purpose of locating the patient closer to home and family, when the transfer is expected to result in significant social/psychological benefit to the patient:

(A) The assessment of significant benefit shall be based on the amount of continued care the patient is expected to need (at least seven days) and the extent to which the transfer locates the patient closer to familial support;

(B) Transfers not meeting these guidelines may be denied on the basis of post-payment review;

(d) Exceptions:

(A) Emergency transfers do not require prior authorization;

(B) In state or contiguous non-emergency transfers for the purpose of providing care which is unavailable in the transferring hospital do not require prior authorization unless the planned service is listed in Table 125-0080-1 of this rule;

(C) All non-urgent transfers to out-of-state non-contiguous hospitals require prior authorization.

(6) Dental procedures provided in a hospital setting:

(a) DMAP will reimburse for hospital services when covered dental services are provided in a hospital setting for clients not enrolled in a FCHP, when a hospital setting is medically appropriate:

(b) For prior authorization for fee-for-service clients, contact the DMAP Dental Services Program coordinator;

(c) For clients enrolled in a FCHP, contact the client's FCHP;

(d) Emergency dental services do not require prior authorization.

(7) **Table 125-0080-1**.

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

Stat. Auth.: ORS 414.019, 414.025 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 11-1983, f. 3-8-83, ef. 4-1-83; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 22-1985, f. 4-23-85, ef. 6-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 45-1989, f. & cert. ef. 8-21-89; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0190; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 7-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 9-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0141

DRG Rate Methodology

(1) Diagnosis Related Groups:

(a) Diagnosis Related Groups (DRG) is a system of classification of diagnoses and procedures based on the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM);

(b) The DRG classification methodology assigns a DRG category to each inpatient service, based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status.

(2) Medicare Grouper: The Medicare Grouper is the software used to assign an individual claim to a DRG category. Medicare revises the Grouper program each year in October. The Division of Medical Assistance Programs (DMAP) uses the Medicare Grouper program in the assignment of inpatient hospital claims. The most recent version of the Medicare grouper will be installed each year within 90 days of the date it is implemented by Medicare. Where better assignment of claims is achieved through changes to the grouper logic, DMAP may modify the logic of the grouper program. DMAP will work with representatives of hospitals that may be affected by grouper logic changes in reaching a cooperative decision regarding changes. DMAP DRG weight tables can be found on the DHS web site.

(3) DRG Relative Weights:

(a) Relative weights are a measure of the relative resources required in the treatment of the average case falling within a specific DRG category;

(b) For most DRGs, DMAP establishes a relative weight based on federal Medicare DRG weights. For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs, Oregon Title XIX fee-for-service claims history is used. To determine whether enough claims exist to establish a reasonable weight for each state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRG, DMAP uses the following methodology: Using the formula N = where Z = 1.15 (a 75% confidence level), S is the standard deviation, and R = 10% of the mean. DMAP determines the minimum number of claims required to set a stable weight for each DRG (N must be at least 5). For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs lacking sufficient volume, DMAP sets a relative weight using:

(A) DMAP non-Title XIX claims data; or

(B) Data from other sources expected to reflect a population similar to the DMAP Title XIX caseload;

(c) When a test shows at the 90% confidence level that an externally derived weight is not representative of the average cost of services provided to the DMAP Title XIX population in that DRG, the weight derived from DMAP Title XIX claims history is used instead of the externally derived weight for that DRG;

(d) Those relative weights based on Federal Medicare DRG weights, will be established when changes are made to the DRG Grouper logic. State specific relative weights shall be adjusted, as needed, as determined by DMAP. When relative weights are recalculated, the overall Case Mix Index (CMI) will be kept constant. Reweighing of DRGs or the addition or modification of the grouper logic will not result in a reduction of overall payments or total relative weights.

(4) Case Mix Index: The hospital-specific case mix index is the total of all relative weights for all services provided by a hospital during a period, divided by the number of discharges.

(5) Unit Value: Hospitals larger than fifty (50) beds are reimbursed using the Diagnosis Related Grouper (DRG) as described in (2) Effective for services on or after:

(a) March 1, 2004, the Unit Value payment is 80% of the 2004 Medicare Unit Value and related data published in Federal Register/Vol.68, No. 148, August 1, 2003. The unit value is also referred to as the operating unit per discharge;

(b) August 15, 2005, the operating unit payment is 100% of 2004 Medicare and related data published in Federal Register/Vol. 68, No. 148, August 1, 2003. The unit value is also referred to as the operating unit per discharge.

(6) DRG Payment: The DRG payment to each Oregon DRG hospital is calculated by adding the unit value to the capital amount, then multiplied by the claim assigned DRG relative weight (out of state hospitals do not receive the capital amount).

(7) Cost Outlier Payments:

(a) Cost outlier payments are an additional payment made to in-state and contiguous hospitals for exceptionally costly services or exceptionally long lengths of stay provided to Title XIX and SF (State Facility) clients;

(b) For dates of service on and after March 1, 2004 the calculation to determine the cost outlier payment for Oregon DRG hospitals is as follows:

(A) Non-covered services (such as ambulance charges) are deducted from billed charges;

(B) The remaining billed charges are converted to hospital-specific costs using the hospital's cost-to-charge ratio derived from the most recent audited Medicare cost report and adjusted to the Medicaid caseload;

(C) If the hospital's net costs as determined above are greater than 270 percent of the DRG payment for the admission and are greater than $25,000, an additional cost outlier payment is made;

(D) Costs which exceed the threshold ($25,000 or 270% of the DRG payment, whichever is greater) are reimbursed using the following formula:

(i) Billed charges less non-covered charges, multiplied by;

(ii) Hospital-specific cost-to-charge ratio equals;

(iii) Net Costs, minus;

(iv) 270% of the DRG or $25,000 (whichever is greater), equals;

(v) Outlier Costs, multiplied by;

(vi) Cost Outlier Percentage, (cost outlier percentage is 50%), equals;

(vii) Cost Outlier Payment;

(E) Third party reimbursements are deducted from the DMAP calculation of the payable amount;

(F) When hospital cost reports are audited during the cost settlement process, an adjustment will be made to cost outlier payments to reflect the actual Medicaid hospital-specific cost-to-charge ratio during the time cost outlier claims were incurred. The cost-to-charge ratio in effect for that period of time will be determined from the audited Medicare Cost Report and DMAP 42, adjusted to reflect the Medicaid mix of services.

(8) Capital:

(a) The capital payment is a reimbursement to in-state hospitals for capital costs associated with the delivery of services to Title XIX, non-Medicare persons. DMAP uses the Medicare definition and calculation of capital costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) For the dates of service on and after March 1, 2004 the Capital cost per discharge is one hundred (100) percent of the published Medicare capital rate for fiscal year 2004, see (5). The capital cost is added to the Unit Value and paid per discharge.

(9) Direct Medical Education:

(a) The direct medical education payment is a reimbursement to in-state hospitals for direct medical education costs associated with the delivery of services to Title XIX eligible persons. DMAP uses the Medicare definition and calculation of direct medical education costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) Direct Medical Education cost per discharge is calculated as follows:

(A) The direct medical education cost proportional to the number of Title XIX non-Medicare discharges during the period from July 1, 1986 through June 30, 1987 are divided by the number of Title XIX non-Medicare discharges. This is the Title XIX Direct Medical Education Cost per discharge;

(B) The Title XIX Direct Medical Education cost per discharge for this period is inflated forward to January 1, 1992, using the compounded HCFA-DRI market basket adjustment;

(c) Direct Medical Education Payment Per Discharge:

(A) The number of Title XIX non-Medicare discharges from each hospital for the quarterly period is multiplied by the inflated Title XIX cost per discharge. This determines the current quarter's Direct Medical Education costs. This amount is then multiplied by 85%. Payment is made within thirty days of the end of the quarter;

(B) The Direct Medical Education Payment per Discharge will be adjusted at an inflation factor determined by the Department in consideration of inflationary trends, hospital productivity and other relevant factors.(C) Notwithstanding subsection (9) of this rule, this subsection becomes effective for dates of service:

(i) On July 1, 2006 and thereafter Direct Medical Education payments will not be made to hospitals: and

(ii) On July 1, 2008 and thereafter Direct Medical Education payments will be made to hospitals. but will not be operative as the basis for payments until DMAP determines all necessary federal approvals have been obtained.

(10) Indirect Medical Education:

(a) The indirect medical education payment is a reimbursement made to instate hospitals for indirect medical education costs associated with the delivery of services to Title XIX non-Medicare clients;

(b) Indirect medical education costs are those indirect costs identified by Medicare as resulting from the effect of teaching activity on operating costs;

(c) Indirect medical education payments are made to in-state hospitals determined by Medicare to be eligible for such payments. The indirect medical education factor in use by Medicare for each of these eligible hospitals at the beginning of the State's fiscal year is the DMAP indirect medical education factor. This factor is used for the entire Oregon fiscal year;

(d) For dates of service on and after March 1, 2004 the calculation for the Indirect Medical Education quarterly payment is as follows: Total paid discharges during the quarter multiplied by the Case Mix Index, multiplied by the hospital specific February 29, 2004 Unit Value, multiplied by the Indirect Factor equals the Indirect Medical Education Payment;

(e) This determines the current quarter's Indirect Medical Education Payment. Indirect medical education payments are made quarterly to each eligible hospital. Payment for indirect medical education costs will be made within thirty days of the end of the quarter.(f) Notwithstanding subsection (10) of this rule, this subsection becomes effective for dates of service:

(i) On July 1, 2006 and thereafter Indirect Medical Education payment will not be made to hospitals; and

(ii) On July 1, 2008 and thereafter Direct Medical Education payments will be made to hospitals, but will not be operative as the basis for payments until DMAP determines all necessary federal approvals have been obtained.

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

Stat. Auth.: ORS 414.019, 414.025 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0006, 461-015-0020 & 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0570, 461-015-0590, 461-015-0600 & 461-015-0610; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 36-1990(Temp), f. 10-29-90, cert. ef. 11-1-90; HR 42-1990, f. & cert. ef. 11-30-90; HR 3-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0840, 410-125-0880, 410-125-0900, 410-125-0920, 410-125-0960 & 410-125-0980; HR 35-1993(Temp), f. & cert. ef. 12-1-93; HR 23-1994, f. 5-31-94, cert. ef. 6-1-94; HR 11-1996(Temp), f. & cert. ef. 7-1-96; HR 22-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 45-1998, f. & cert. ef. 12-1-98; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 37-2005(Temp) f. & cert. ef. 8-15-05 thru 1-15-06; OMAP 70-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0220

Services Billed on the Electronic 837I or on the Paper UB-04 and Other Claim Forms

(1) All inpatient and outpatient services provided by the hospital or hospital employees, unless otherwise specified below, are billed on the electronic 837I (837 Institutional) or on the paper CMS 1450 (UB-04) claim form.

(2) Professional staff and other providers: Services provided by other providers or professional staff with whom the hospital has a contract or agreement regarding provision of services and whom the hospital reimburses a salary or a fee are billed on the electronic 837I or paper CMS 1450 (UB-04) along with other inpatient or outpatient charges if such costs are reported on the hospital's Medicare Cost Report as a hospital cost.

(3) Residents and medical students: Professional services provided by residents or medical students serving in the hospital as residents or students at the time services are provided are reimbursed by the Division of Medical Assistance Programs (DMAP) through graduate medical education, for the hospitals that qualify (See OAR 410-125-0141) for payments and may not be billed on the electronic 837I or paper CMS 1450 (UB-04).

(4) Diagnostic and similar services provided by another provider or facility outside the hospital: When diagnostic or short-term services are provided to an inpatient by another provider or facility because the admitting hospital does not have the equipment or facilities to provide all services required and the patient is returned within 24 hours to the admitting hospital, the admitting hospital should add the following charges to the inpatient electronic 837I or paper CMS 1450 (UB-04) claim:

(a) Charges from the other provider or hospital under the appropriate Revenue Code. The admitting hospital is responsible for reimbursing the other provider or hospital. DMAP will not reimburse the other provider or hospital; and

(b) Charges for transportation to the other facility or provider. These must be billed under Revenue Code 542. No prior authorization of the transport is required. The hospital will arrange for the transport and pay the transportation provider for the transport. DMAP will not reimburse the transportation provider. This is the only instance in which transportation charges can be billed on the electronic 837I or paper CMS 1450 (UB-04).

(5) Orthotics, prosthetics, durable medical equipment and implants:

(a) When a provider of orthotic or prosthetic devices provides services or materials to an inpatient through an agreement or arrangement with the hospital, the cost of those services will be billed by the hospital on the electronic 837I or the paper CMS 1450 (UB-04), along with all other inpatient services. The hospital is responsible for reimbursing the provider. DMAP will not reimburse the provider;

(b) Wheelchairs provided to the client for the client's use after discharge from the hospital may be billed separately by the Durable Medical Equipment supplier or by the hospital if the hospital is the supplier.

(6) Pharmaceutical and Home Parenteral/ Enteral Services: All hospital pharmaceutical charges must be billed on the electronic 837I or paper UB-04, except home parenteral and enteral services and medications provided to patients who are in nursing homes:

(a) Home parenteral and enteral services, including home hyperalimentation, Home IV Antibiotics, home IV analgesics, home enteral therapy, home IV chemotherapy, home IV hydrational fluids, and other home IV drugs, require prior authorization and must be billed on the Pharmacy Invoice Form in accordance with the rules in the Home Enteral/Parenteral rules (Chapter 410 Division 148);

(b) Medications provided to clients who are in nursing homes must be billed on the Pharmacy Invoice Form in accordance with the rules in the Pharmaceutical Services rules (Chapter 410 Division 121).

(7) Dental services: Dental services provided by hospitals are billed on the electronic 837I or paper CMS 1450 (UB-04). Reimbursement for dental services provided by hospitals is restricted to those identified in the Dental Services rules (Chapter 410 Division 123) as covered services.

(8) End-stage renal dialysis facilities: Hospitals providing end-stage renal dialysis and free-standing end-stage renal dialysis facilities will bill on the electronic 837I or paper CMS 1450 (UB-04) as described in these rules and instructions and will be reimbursed at the hospital's interim rate.

(9) Maternity case management:

(a) Hospital clinics may serve as maternity case managers for pregnant clients. The Medical-Surgical rules (chapter 410 division 130) contain information on the scope of services, definition of program terms, procedure codes, and provider qualifications. These services are billed by hospitals on the electronic 837I or paper CMS 1450 (UB-04); and

(b) Providers must bill using Revenue Code 569.

(10) Home health care services. Hospitals that operate home health care services must obtain a separate provider number and bill for these services in accordance with the Home Health Care Services rules (chapter 410 division 127).

(11) Hospital operated air and ground ambulance services. A hospital which operates an air or ground ambulance service may apply to DMAP for a provider number as an air or ground ambulance provider. If costs for staff and equipment are reported on the Medicare Cost Report, these costs must be identifiable. DMAP will remove these costs from the Medicare Cost Report in calculating the hospital's cost-to-charge ratio for outpatient services. These services are billed on the electronic 837P (837 Professional) claim form or the paper CMS-1500 in accordance with the rules and restrictions contained in the Medical Transportation rules (chapter 410 division 136).

(12) Supervising physicians providing services in a teaching setting:

(a) Services provided on an inpatient or outpatient basis by physicians who are on the faculty of teaching hospitals may be billed on the electronic 837I or paper CMS 1450 (UB-04) with other inpatient or outpatient charges only when:

(A) The physician is serving as an employee of the hospital, or receives reimbursement from the hospital for provision of services, during the period of time when services are provided; and

(B) The hospital does not report these services as a direct medical education cost on the Medicare and DMAP cost report;

(b) The services of supervising faculty physicians are not to be billed to DMAP on either the electronic 837P, the paper CMS-1500 or the electronic 837I or paper CMS 1450 (UB-04)if the hospital elects to report the cost of these professional services as a direct medical education cost on the Medicare and DMAP cost report; and

(c) The services of supervising faculty physicians are billed on the electronic 837P or the paper CMS-1500 if the physician is serving in a private capacity during the period of time when services are provided, i.e., the physician is receiving no reimbursement from the hospital for the period of time during which services are provided. Refer to the Medical-Surgical Services rules (chapter 410 division 130) or additional information on billing on the electronic 837P or the paper CMS-1500.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 414.019, 414.025 & 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 44-1985, f. & ef. 7-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0055, 461-015-0130, 461-015-0135; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0260, 461-015-0290, 461-015-0300, 461-015-0310, 461-015-0320, 461-015-0420, 461-015-0430; HR 42-1991, f. & cert. ef. 10-1-91, Renumbered from 410-125-0280, 410-125-0300, 410-125-0320, 410-125-0340, 410-125-0540 & 410-125-0560; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 13-2005, f. 3-11-05, cert. ef. 4-1-05; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0360
Definitions and Billing Requirements

(1) Total days on an inpatient claim must equal the number of accommodation days. Do not count the day of discharge when calculating the number of accommodation days.

(2) Inpatient services are services to patients who typically are admitted to the hospital before midnight and listed on the following day's census, with the following exceptions:

(a) A patient admitted and transferred to another acute care hospital on the same day is considered an inpatient;

(b) A patient who expires on the day of admission is an inpatient; and

(c) Births.

(3) Outpatient services:

(a) Outpatient services are services to patients who are treated and released the same day;

(b) Outpatient services also include services provided prior to midnight and continuing into the next day if the patient was admitted for ambulatory surgery, admitted to a birthing center, a treatment or observation room, or a short-term stay bed;

(c) Outpatient observation services are services provided by a hospital, including the use of a bed and periodic monitoring by hospital nursing or other staff for the purpose of evaluation of a patient's medical condition. A maximum of 48 hours of outpatient observation will be reimbursed. An outpatient observation stay that exceeds 48 hours must be billed as inpatient; and

(d) Outpatient observation services do not include the following:

(A) Services provided for the convenience of the patient, patient's family or physician but which are not medically necessary;

(B) Standard recovery period; and

(C) Routine preparation services and recovery for diagnostic services provided in a hospital outpatient department.

(4) Outpatient and inpatient services provided on the same day: If a patient receives services in the emergency room or in any outpatient setting and is admitted to an acute care bed in the same hospital on the same day, combine the emergency room and other outpatient charges related to that admission with the inpatient charges. Bill on a single UB-04 for both inpatient and outpatient services provided under these circumstances:

(a) If on the day of discharge, the client uses outpatient services at the same hospital, these must be billed on the UB-04 along with other inpatient charges, regardless of the type of service provided or the diagnosis of the client. Prescription medications provided to a patient being discharged from the hospital may be billed separately as outpatient Take Home Drugs if the patient receives more than a three-day supply;

(b) Inpatient and outpatient services provided to a client on the same day by two different hospitals will be reimbursed separately. Each hospital will bill for the services provided by that hospital.

(5) Outpatient procedures which result in an inpatient admissions: If, during the course of an outpatient procedure, an emergency develops requiring an inpatient stay, place a "1" in the Type of Admission field. The principal diagnosis should be the condition or complication that caused the admission. Bill charges for the outpatient and inpatient services together.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 414.019, 414.025, 414.065 & 414.743
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 37-1983 (Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0055; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0330, 461-015-0340 & 461-015-0380; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 42-1991, f. & cert. ef. 10-1-91, Renumbered from 410-125-0380 & 410-125-0460; HR 22-1993 (Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0400
Discharge

(1) A discharge from a hospital is the formal release of a patient to home, to another facility, such as an intermediate care facility or nursing home, to a home health care agency, or to another provider of health care services.

(2) For services beginning January 1, 1993, and later, the transfer of a patient from acute care to a distinct part physical rehabilitation unit (i.e., a unit exempt from the Medicare Prospective Payment System) within the same hospital will be considered a discharge. The admission to the rehabilitation unit is billed separately. All other transfers occurring within a hospital, including transfers to Medicare PPS-exempt psychiatric units, will not be considered discharges and all charges for services must be submitted on a single UB-04 billing for the admission.

(3) Transfer from a hospital occurs when an individual is formally released to another acute care hospital, to a skilled nursing facility, or an intermediate care facility. When a physician sends a patient directly to another hospital for further inpatient care, the discharge should be billed as a transfer, regardless of the mode of transportation.

(4) When the Division of Medical Assistance Programs (DMAP) receives claims from two hospitals for the same patient, and the date of discharge from one hospital is the same as the date of admission to the other, DMAP will assume that a transfer has occurred. DMAP will change the discharge status code on the first claim to 02 (Transferred to Another Acute Care Facility), automatically generating an adjustment if the claim has already been adjudicated, unless discharge status on the claim is already 02 (Transfer) or 07 (Discharge AMA). If it is believed that DMAP made an error in assigning Discharge Status code 02 to a claim, the hospital may submit an Adjustment Request along with supporting documentation from the medical record.

(5) A transfer between units within a hospital is not a transfer for billing purposes, except in the case of transfers to distinct part physical rehabilitation units. Note that transfers in the other direction, from rehabilitative care to acute care, are not considered discharges from the rehabilitation unit unless the stay in the acute setting exceeds seven days. Stays of seven days or less in the acute care setting should not be billed separately.

(6) Some transfers, including transfers to distinct part rehabilitation units, require prior authorization.

Stat. Auth.: ORS 414.019, 414.025, 414.065 & 414.743
Stats. Implemented: ORS 414.065
Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0600
Non-Contiguous Out-of-State Hospital Services

(1) Non-contiguous out-of-state hospitals are those hospitals located more than 75 miles from the Oregon border.

(2) The hospital must be enrolled as a provider with Oregon Medical Assistance Programs to receive payment. Contact the Division of Medical Assistance Programs (DMAP) for information on enrollment.

(3) Billings are sent to DMAP.

(4) When the service provided is emergent or urgent, no prior authorization is required. The claim should be sent to DMAP along with documentation supporting the emergent or urgent requirement for treatment.

(5) In a non-emergency situation, prior authorization is required for all services. Contact: DMAP.

(6) Claims must be billed on the electronic 837I or on a paper CMS 1450 (UB-04), unless other arrangements are made for billing through the DMAP.

Stat. Auth.: ORS 414.019, 414.025 & 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0450; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

410-125-0720
Adjustment Requests

(1) Most overpayment and under-payments are resolved through the adjustment process. Only paid claims can be adjusted. If no payment was made, the claim must be submitted using a CMS 1450 (UB-04) for processing. All overpayments must be reported. Overpayments will be taken from future payments.

(2) Much of the information required on the Adjustment Request Form is printed on the paper Remittance Advice or the electronic 835. Documentation may be submitted to support the request. Attach a copy of the claim and paper Remittance Advice or the electronic 835 to the Adjustment Request (DMAP 1036). Adjustment requests must be submitted in writing to the Division of Medical Assistance Programs(DMAP).

(3) Complete adjustment instructions can be found in Hospital Services Supplemental Information.

[Publications: Publications referenced are available from the agency.]
Stat Auth.: ORS 184.750, 184.770, 411 & 414
Stats. Implemented: ORS 414.065
Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; HR 21 1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0510; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef 1-4-91; HR 42-1991, f. & cert. ef. 10-1-91; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: July 2008 — Clarify policies & procedures/ technical changes due to CPT code updates.
Adm. Order No.: DMAP 20-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-130-0000, 410-130-0180, 410-130-0190, 410-130-0200, 410-130-0220, 410-130-0255, 410-130-0610, 410-130-0680
Subject: The Medical-Surgical Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended rules listed above to clarify current policies and procedures to ensure Oregon Administrative Rules are not open to interpretation by providers or outside parties and to help eliminate confusion possibly resulting in non-compliance. Amendments to 410-130-0180, 410-130-0190, 410-130-0200, 410-130-0220, 410-130-0255, and 410-130-0680 update CPT code changes, remove prior notification requirements, and make minor internal operational changes pertaining to reimbursement. Having temporarily amended 410-130-0610, DMAP permanently amends the rules to reflect the advancement of telemedicine technology and evidence based medicine research related to the telephonic and e-visit coverage in the HSC and its practice guidelines. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-130-0000
Foreword

(1) The Division of Medical Assistance Programs (DMAP) Medical-Surgical Services rules are designed to assist medical-surgical providers to deliver medical services and prepare health claims for clients with Medical Assistance Program coverage. Providers must follow the DMAP rules in effect on the date of service.

(2) DMAP enrolls only the following types of providers as performing providers under the Medical-Surgical program:

(a) Doctors of medicine, osteopathy and naturopathy;
(b) Podiatrists;
(c) Acupuncturists;
(d) Licensed Physician assistants;
(e) Nurse practitioners;
(f) Laboratories;
(g) Family planning clinics;
(h) Social workers (for specified services only);
(i) Licensed Direct entry midwives;
(j) Portable x-ray providers;
(k) Ambulatory surgical centers;
(l) Chiropractors;
(m) Licensed Dieticians (for specified service only);
(n) Registered Nurse First Assistants;
(o) Certified Nurse Anesthetists;
(p) Clinical Pharmacists.

(3) For clients enrolled in a managed care plan, contact the client's plan for coverage and billing information.

(4) The Medical-Surgical Services rules contain information on policy, special programs, prior authorization, and criteria for some procedures. All DMAP rules are intended to be used in conjunction with the General Rules for Oregon Medical Assistance Programs (OAR 410 Division 120) and the Oregon Health Plan (OHP) Administrative Rules (OAR 410 Division 141).

(5) The Health Services Commission's Prioritized List of Health Services is found on their website at: http://www.oregon.gov/OHPPR/HSC/

Stat. Auth.: ORS 404.110, 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 868, f. 12-30-77, ef. 2-1-78; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS

Branch offices; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0001; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0500; HR 6-1994, f. & cert. ef. 2-1-94; HR 23-1997, f. & cert. ef. 10-1-97; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

410-130-0180
Drugs

(1) The Division of Medical Assistance Programs' (DMAP) Medical-Surgical Services Program reimburses practitioners for drugs only when administered by the practitioner in the office, clinic or home settings. DMAP does not reimburse practitioners for drugs that are self-administered by the client, EXCEPT contraceptives such as birth control pills, spermicides and patches:

(a) Use an appropriate CPT therapeutic injection code for administration of injections;

(b) Use an appropriate HCPCS code for the specific drug. Do not bill for drugs under code 99070;

(c) When billing unclassified drugs and other drug codes listed below, bill at acquisition cost (purchase price plus postage) and use the following codes:

(A) J1815-J1817;
(B) J3490;
(C) J3950
(D) J7699;
(E) J7799;
(F) J8499;
(G) J8999
(H) J9999;

(I) Include the name of the drug, NDC number, and dosage. (d) Do not bill for local anesthetics. Reimbursement is included in the payment for the tray and/or procedure.

(2) DMAP requires both the NDC number and HCPCS codes for claim submission on the electronic 837P form.

(3) For Not Covered/Bundled services or Prior Authorization Requirements refer to OAR 410-130-0200 Table 130-0200-1 and OAR 410-130-0220 Table 130-0220-1.

(4) Not covered services include:

(a) Laetrile;

(b) Home pregnancy kits and products designed to promote fertility;

(c) DMSO, except for instillation into the urinary bladder for symptomatic relief of interstitial cystitis;

(d) Infertility drugs;

(e) Sodium hyaluronate and Synvisc (J7319).

(5) Follow criteria outlined in the following:

(a) Billing Requirements — OAR 410-121-0150;

(b) Brand Name Pharmaceuticals — OAR 410-121-0155;

(c) Prior Authorization Procedures — OAR 410-121-0060;

(d) Drugs and Products Requiring Prior Authorization — OAR 410-121-0040;

(e) Drug Use Review — OAR 410-121-0100;

(f) Participation in Medicaid's Drug Rebate Program — OAR 410-121-0157.

(6) Clozapine Therapy:

(a) Clozapine is covered only for the treatment of clients who have failed therapy with at least two anti-psychotic medications;

(b) Clozapine Supervision is the management and record keeping of Clozapine dispensing as required by the manufacturer of Clozapine:

(A) Providers billing for Clozapine supervision must document all of the following:

(i) Exact date and results of White Blood Counts (WBC), upon initiation of therapy and at recommended intervals per the drug labeling;

(ii) Notations of current dosage and change in dosage;

(iii) Evidence of an evaluation at intervals recommended per the drug labeling requirements approved by the FDA;

(iv) Dates provider sent required information to manufacturer.

(B) Only one provider (either a physician or pharmacist) may bill per week per client;

(C) Limited to five units per 30 days per client;

(D) Use code 90862 with modifier TC to bill for Clozapine supervision.

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

Stat. Auth.: ORS 404.110, 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0620; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 33-2002, f. & cert. ef. 8-1-02; OMAP 39-2002, f. 9-13-02, cert. ef. 9-15-02; OMAP 52-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

410-130-0190
Tobacco Cessation

(1) Tobacco treatment interventions may include one or more of these services: basic, intensive, and telephone calls.

(2) Basic tobacco cessation treatment includes the following services:

(a) Ask — systematically identify all tobacco users — usually done at each visit;

(b) Advise — strongly urge all tobacco users to quit using;

(c) Assess — the tobacco user's willingness to attempt to quit using tobacco within 30 days;

(d) Assist — with brief behavioral counseling, treatment materials and the recommendation/prescription of tobacco cessation therapy products (e.g., nicotine patches, oral medications intended for tobacco cessation treatment and gum);

(e) Arrange — follow-up support and/or referral to more intensive treatments, if needed.

(3) When providing basic treatment, include a brief discussion to address client concerns and provide the support, encouragement, and counseling needed to assist with tobacco cessation efforts. These brief interventions, less than 6 minutes, generally are provided during a visit for other conditions, and additional billing is not appropriate.

(4) Intensive tobacco cessation treatment is on the Health Services Commission's Prioritized List of Health Services and is covered if a documented quit date has been established. This treatment is limited to ten sessions every three months. Treatment is reserved for those clients who are not able to quit using tobacco with the basic intervention measures.

(5) Intensive tobacco cessation treatment includes the following services:

(a) Multiple treatment encounters (up to ten in a 3 month period);

(b) Behavioral and tobacco cessation therapy products (e.g., nicotine patches, oral medications intended for tobacco cessation treatment and gum);

(c) Individual or group counseling, six minutes or greater.

(6) Telephone calls: DMAP may reimburse a telephone call intended as a replacement for face-to-face contact with clients who are in intensive treatment as it is considered a reasonable adjunct to, or replacement for, scheduled counseling sessions:

(a) The call must last six to ten minutes and provides support and follow-up counseling;

(b) The call must be conducted by the provider or other trained staff under the direction or supervision of the provider;

(c) Enter proper documentation of the service in the client's chart.

(7) Diagnosis Code ICD-9-CM 305.1 (Tobacco Use Disorder):

(a) Use as the principal diagnosis code when the client is enrolled in a tobacco cessation program or if the primary purpose of the visit is for tobacco cessation services;

(b) Use as a secondary diagnosis code when the primary purpose of this visit is not for tobacco cessation or when the tobacco use is confirmed during the visit.

(8) Billing Information: Managed care plans may have tobacco cessation services and programs. This rule does not limit or prescribe services a Prepaid Health Plan provides to clients receiving the Basic Health Care Package.

Stat. Auth.: ORS 404.110, 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 36-1992, f. & cert. ef. 12-1-92; OMAP 15-1998, f. & cert. ef. 5-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

410-130-0200
Prior Authorization/Prior Notification

(1) For services provided to clients enrolled in a prepaid health plan (PHP), providers must obtain prior authorization (PA) from the PHP. Contact the PHP for their PA requirements and billing instructions.

(2) PA is not required for services covered by Medicare when the client has both Medicare and Medical Assistance Program coverage.

However, PA is required for most transplants, even if they are covered by Medicare.

(3) PA is not required for kidney and cornea transplants unless they are performed out-of-state.

(4) Providers must obtain PA from the Division of Medical Assistance Program's (DMAP) Transplant Coordinator for transplants and non-emergent, non-urgent out-of-state services. Refer to the DMAP Transplant Services rules (chapter 410, division 124) for further information on transplants and refer to the DMAP General Rules (chapter 410, division 120) for further information concerning out-of-state services.

(5) Providers must obtain PA from the Department of Human Services (DHS) Medically Fragile Children's Unit (MFCU) for services provided to MFCU clients.

(6) Providers must obtain PA from the Case Management Contractor shown on the client's Medical Care ID for services provided to clients enrolled in the fee-for-service (FFS) High Risk Medical Case Managed program. See the Medical-Surgical Services Supplemental Information guide for details.

(7) PA is required for all procedure codes listed in Table 130-0200-1, in this rule. Providers must obtain PA for these procedures from the Medical-Surgical Prior Authorization contractor) regardless of the setting they are performed in. A second opinion may be requested by DMAP or the contractor before PA is given for a surgery;

(8) PA is not required for hospital admissions unless the procedure requires PA;

(9) PA is not required for emergent or urgent procedures or services;

(10) Providers must obtain PA by the treating and performing practitioners;

(11) Refer to Table 130-0200 for all services/procedures requiring prior authorization.Table 130-0200

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

Stat. Auth.: ORS 404.110, 409.010, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0045; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

410-130-0220
Not Covered/BundledServices

(1) Refer to the Oregon Health Plan Administrative Rules (chapter 410, division 141) and General Rules (chapter 410, division 120) for coverage of services. Refer to Table 130-0220-1, in this rule, for additional information regarding not covered services or for services that are considered by the Division of Medical Assistance Programs (DMAP) to be bundled.

(2) The following are examples of not covered services:

(a) Psychotherapy services (covered only through local Mental Health Clinics and Mental Health Organizations);

(b) Routine postoperative visits (included in the payment for the surgery) during 90 days following major surgery (global period) or 10 days following minor surgery;

(c) Services provided at the client's request in a location other than the practitioner's office that are normally provided in the office;

(d) Telephone calls for purposes other than tobacco cessation, maternity case management and telemedicine.

(3) This is not an inclusive list. Specific information is included in the DMAP General Rules, Medical Assistance Benefits: Excluded Services and Limitations (OAR 410-120-1200). Table 130-0220-1

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

Stat. Auth.: ORS 404.110, 409.010, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0640; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 21-1991, f. 4-16-91, cert. ef. 5-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 16-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 30-1998, f. & cert. ef. 9-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 37-1999, f. & cert. ef. 10-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

410-130-0255
Immunizations and Immune Globulins

(1) Use standard billing procedures for vaccines that are not part of the Vaccines for Children (VFC) Program.

(2) The Division of Medical Assistance Programs (DMAP) covers Synagis (palivizumab-rsv-igm) only for high-risk infants and children as defined by the American Academy of Pediatric guidelines. Bill 90378 for Synagis.

(3) Providers are encouraged to administer combination vaccines when medically appropriate and cost effective.

(4) VFC Program:

(a) Under this federal program, vaccine serums are free for clients' ages 0 through 18. DMAP will not reimburse the cost of privately purchased vaccines that are provided through the VFC Program, but will reimburse for the administration of those vaccines;

(b) Only providers enrolled in the VFC Program can receive free vaccine serums. To enroll as a VFC provider, contact the Public Health Immunization Program. For contact information, see the Medical-Surgical Supplemental Information;

(c) DMAP will reimburse providers for the administration of any vaccine provided by the VFC Program. Whenever a new vaccine becomes available through the VFC Program, administration of that vaccine is also covered by DMAP;

(d) Refer to Table 130-0255-1 for immunization codes provided through the VFC Program. Recommendations as to who may receive influenza vaccines vary from season to season and may not be reflected in Table 130-0255-1;

(e) Use the following procedures when billing for the administration of a VFC vaccine:

(A) When the sole purpose of the visit is to administer a VFC vaccine, the provider should bill the appropriate vaccine procedure code with modifier -26 or -SL for each injection. Do not bill CPT code 90465-90474 or 99211;

(B) When the vaccine is administered as part of an Evaluation and Management service (e.g., well-child visit) the provider should bill the appropriate immunization code with modifier -26, or -SL for each injection in addition to the Evaluation and Management code.Table 130-0255-1

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

Stat. Auth.: ORS 404.110, 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 4-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0800, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

410-130-0610
Telemedicine

(1) For the purposes of this rule, telemedicine is defined as the use of telephonic or electronic communications to medical information from one site to another to improve a patient's health status.

(2) Unless authorized in OAR 410-120-1200 Exclusions, other types of telecommunications are not covered, such as telephone calls, images transmitted via facsimile machines and electronic mail:

(a) When those types are not being used in lieu of videoconferencing, due to limited videoconferencing equipment access, or

(b) When those types and specific services are not specifically allowed in this rule per the Oregon Health Services Commission's Prioritized List of Health Services and Practice Guideline.

(3) Provider Requirements:

(a) The referring and evaluating practitioner must be licensed to practice medicine within the state of Oregon or within the contiguous area of Oregon and must be enrolled as a Division of Medical Assistance Programs (DMAP) provider.

(b) For Addiction and Mental Health Division (AMH) providers, in addition to being enrolled as a DMAP provider under (3)(a). AMH providers must have an AMH agency letter of approval, certification of Approval or license issued by AMH. Individuals must also be providing covered services and be authorized to submit claims for covered telemedicine services under this rule.

(c) Providers billing for covered telemedicine services are responsible for the following:

(A) Complying with Health Insurance Portability and Accountability Act (HIPAA) and DHS Confidentiality and Privacy Rules and security protections for the patient in connection with the telemedicine communication and related records. Examples of applicable DHS Confidentiality and Privacy Rules include: OAR 410 Division 14 (DHS Privacy Rules) and 407-014-0300 to 407-014-0320 (Access Control); OAR 407-120-0170, 410-120-1360, and 410-120-1380. Examples of federal and state privacy and security laws that may apply include, if applicable, HIPAA (45 CFR Parts 160, 162, and 164), and 42 CFR Part 2, and ORS 646A.600 to 646A.628 (Oregon Consumer Identity Theft Protection Act);

(B) Obtaining and maintaining technology used in the telemedicine communication that is compliant with privacy and security standards in HIPAA and DHS Privacy and Confidentiality Rules described in subsection (3) (A);

(C) Ensuring policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records (whether oral or recorded in any form or medium) to unauthorized persons;

(D) Complying with the relevant Health Service Commission (HSC) practice guideline for telephone and email consultation. Refer to the current prioritized list and practice guidelines at http://www.oregon.gov/OHPR/HSC/current_prior.shtml;

(E) Maintaining clinical and financial documentation related to telemedicine services as required in OAR 410-120-1360.

(4) Coverage for telemedicine services:

(a) The telemedicine definition encompasses different types of programs, services and delivery mechanisms for medically appropriate covered services within the patient's benefit package;

(b) Patient consultations using telephone and online or electronic mail (e-mail) are covered when billed services comply with the practice guidelines set forth by the Health Service Commission (HSC) and the applicable HSC-approved code requirements, delivered consistent with the HSC practice guideline;

(c) Patient consultations using videoconferencing, a synchronous (live two-way interactive) video transmission resulting in real time communication between a medical practitioner located in a distant site and the client being evaluated and located in an originating site, is covered when billed services comply with the billing requirements stated in below;

(d) Telephonic codes may be used in lieu of videoconferencing codes, if videoconferencing equipment is not available.

(5) Telephone and E-mail billing requirements: Use the Evaluation and Management (E/M) code authorized in the HSC practice guideline, unless otherwise authorized in OAR 410-120-1200.

(6) Videoconferencing billing requirements:

(a) Only the transmission site (where the patient is located) may bill for the transmission:

(A) Bill the transmission with code Q3014;

(B) The referring practitioner may bill an E/M code only if a separately identifiable visit is performed. The visit must meet all of the criteria of the E/M code billed;

(C) The referring provider is not required to be present with the client at the originating site.

(b) The evaluating practitioner at the distant site may bill for the evaluation, but not for the transmission (code Q3014):

(A) Bill the most appropriate E/M code for the evaluation;

(B) Add modifier GT to the E/M code to designate that the evaluation was made by a synchronous (live and interactive) transmission.

(c) In addition, for AMH services specifically identified as allowable for telephonic delivery when appropriate, refer to the procedure code and reimbursement rates published by AMH.

Stat. Auth.: ORS 404.110, 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

410-130-0680
Laboratory and Radiology

(1) The following tables list the medical and surgical services that:

(a) Require prior authorization (PA) — OAR 410-130-0200 Table 130-0200-1 (PET scans require PA and are included in the table), and;

(b) Are not covered/bundled — OAR 410-130-0220 Table 130-0220-1.

(2) Newborn screening (NBS) kits and collection and handling for newborn screening (NBS) tests performed by the Oregon State Public Health Laboratory (OSPHL) are considered bundled into the delivery fee and, therefore, must not be billed separately. Replacement of lost NBS kits may be billed with code S3620 with modifier –TC. The loss must be documented in the client's medical record. NBS confirmation tests performed by reference laboratories at the request of the OSPHL will be reimbursed only to the OSPHL.

(3) The Division of Medical Assistance Programs (DMAP) covers lab tests performed in relation to a transplant only if the transplant is covered and if the transplant has been authorized. See the DMAP Transplant Services administrative rules (chapter 410, division 124).

(4) All lab tests must be specifically ordered by, or at the direction of a licensed medical practitioner within the scope of their license.

(5) If a lab sends a specimen to a reference lab for additional testing, the reference lab may not bill for the same tests performed by the referring lab.

(6) When billing for lab tests, use the date that the specimen was collected as the date of service (DOS) even if the tests were not performed on that date.

(7) Reimbursement for drawing/collecting or handling samples:

(a) DMAP will reimburse providers once per day regardless of the frequency performed for drawing/collecting the following samples:

(A) Blood — by venipuncture or capillary puncture, and;

(B) Urine — only by catheterization.

(b) DMAP will not reimburse for the collection and/or handling of other specimens, such as PAP or other smears, voided urine samples, or stool specimens. Reimbursement is bundled in the reimbursement for the exam and/or lab procedures and is not payable in addition to the laboratory test.

(8) Pass-along charges from the performing laboratory to another laboratory, medical practitioner, or specialized clinic are not covered for payment and are not to be billed to DMAP.

(9) Only the provider who performs the test(s) may bill DMAP.

(10) Clinical Laboratory Improvement Amendments (CLIA) Certification:

(a) DMAP will only reimburse laboratory services to providers who are CLIA certified by the Centers for Medicare and Medicaid Services (CMS);

(b) CLIA requires all entities that perform even one 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;

(c) Providers must notify DMAP of the assigned ten-digit CLIA number;

(d) Payment is limited to the level of testing authorized by the CLIA certificate at the time the test is performed.

(11) Organ Panels:

(a) DMAP will only reimburse panels as defined by the CPT codes for the year the laboratory service was provided. Tests within a panel may not be billed individually even when ordered separately. The same panel may be billed only once per day per client;

(b) DMAP will pay at the panel maximum allowable rate if two or more tests within the panel are billed separately and the total reimbursement rate of the combined codes exceeds the panel rate, even if all the tests listed in the panel are not ordered or performed.

(12) Radiology:

(a) Provision of diagnostic and therapeutic radionuclide(s), HCPCS A9500-A9699, are payable only when given in conjunction with radiation oncology and nuclear medicine codes 77401-79999;

(b) HCPCS codes R0070 through R0076 are covered.

(13) Reimbursement of contrast and diagnostic-imaging agents is bundled in the radiology procedure except for low osmolar contrast materials (LOCM).

(14) Supply of LOCM may be billed in addition to the radiology procedure only when the following criteria are met:

(a) Prior adverse reaction to contrast material, with the exception of a sensation of heat, flushing or a single episode of nausea or vomiting;

(b) History of asthma or significant allergies;

(c) Significant cardiac dysfunction including recent or imminent cardiac decompensation, severe arrhythmia, unstable angina pectoris, recent myocardial infarction or pulmonary hypertension;

(d) Decrease in renal function;

(e) Diabetes;

(f) Dysproteinemia;

(g) Severe dehydration;

(h) Altered blood brain barrier (i.e., brain tumor, subarachnoid hemorrhage);

(i) Sickle cell disease, or;

(j) Generalized severe debilitation.

(15) X-ray and EKG interpretations in the emergency room:

(a) DMAP reimburses only for one interpretation of an emergency room patient's x-ray or EKG. The interpretation and report must have directly contributed to the diagnosis and treatment of the patient;

(b) DMAP considers a second interpretation of an x-ray or EKG to be for quality control purposes only and will not be reimbursed;

(c) Payment may be made for a second interpretation only under unusual circumstances, such as a questionable finding for which the physician performing the initial interpretation believes another physician's expertise is needed.

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

Stat. Auth.: ORS 404.110, 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; Renumbered from 461-014-0056, AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0800; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 27-1992(Temp), f. & cert. ef. 9-1-92; HR 33-1992, f. 10-30-92, cert. ef. 11-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 15-1998, f. & cert. ef. 5-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: July 2008 revisions to clarify text.
Adm. Order No.: DMAP 21-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-140-0040, 410-140-0050, 410-140-0160, 410-140-0260, 410-140-0320, 410-140-0400
Subject: The Visual Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to certain clients. DMAP amended rules to clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance. These amendments will help facilitate provider compliance with eligibility, service coverage and limitations, prior authorizations and billing requirements. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-140-0040
Prior Authorization

(1) Prior Authorization (PA) is when the Division of Medical Assistance Programs (DMAP) authorizes payment for medically appropriate services/supplies for clients prior to the provision of the services/supplies.

(2) PA requirements for services or supplies listed in the Visual Services administrative rules are intended for clients that are not enrolled in a Fully Capitated Health Plan (FCHP). If the client is enrolled in a FCHP, the provider must contact the client's FCHP for their policy governing PA requirements and to obtain any necessary PAs.

(3) If a claim has been denied because PA was not obtained appropriately, or the provider does not follow the rules established by DMAP or the FCHP, DMAP, the FCHP, and the client are not responsible for payment.

(4) A PA number must be present on the billing claim for any visual service listed in the DMAP administrative rules as requiring a PA, or the claim will be denied.

(5) All dispensing of ophthalmic materials by a provider other than a physician or optometrist require a written prescription signed by a physician or optometrist.

(6) PA does not guarantee payment.

(7) PA does not guarantee eligibility. Providers must verify eligibility on the date of service. (Refer to General Rules 410-120-1140 (Verification of Eligibility) for specific details. After eligibility has been verified, it is the provider's responsibility to determine if the service requires PA.

(8) If a PA is required and the client is:

(a) Fee-for-service (not enrolled in an FCHP) — Obtain PA from DMAP as outlined in the Visual Services administrative rules and in the Visual Services Supplemental Information;

(b) Enrolled with an FCHP — Contact the FCHP for their policy governing PAs.

(9) DMAP will review documentation submitted to determine if a request for PA will be approved. PA requests that do not meet the rule criteria will be denied. If DMAP receives a request for PA after the service has been rendered, PA will be denied.

(10) DMAP does not accept requests for PA via the phone.

(11) The provider must submit a signed request for PA. Refer to the Visual Services Supplemental Guide for information required on the PA form and processing of the PA.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 9-1978, f. & ef. 2-1-78; AFS 2-1979, f. 2-6-79, ef. 3-1-79; AFS 2-1982(Temp), f. 1-20-82, ef. 2-1-82; AFS 45-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 55-1983, f. 11-15-83, ef. 12-1-83; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 24-1984(Temp), f. & ef. 5-29-84; AFS 31-1984(Temp), f. 7-26-84, ef. 8-1-84; AFS 5-1985, f. & ef. 1-25-85; AFS 22-1987, f. 5-29-87, ef. 7-1-87; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0010; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0170; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08

410-140-0050
Eligibility

(1) It is the responsibility of the provider to verify that the individual is eligible for Medical Assistance Program coverage (Title XIX or Title XXI) on the date of service and whether a managed care plan or the Division of Medical Assistance Programs (DMAP) is responsible for reimbursement. The provider assumes full financial risk in serving a person not confirmed as eligible for the service provided on the date(s) of service. Refer to General Rules 410-120-1140 (Verification of Eligibility) for specific details.

(2) Service eligibility verification:

(a) The provider must also verify if the client is eligible to receive vision services. For example, some vision services such as an intermediate or comprehensive eye exam for the purpose of prescribing glasses or contacts are limited to once every 24 months for adults. The provider must verify from DMAP or the client's Fully Capitated Health Plan (FCHP), if the client has received these services within the limitation period;

(b) The provider must check the service being provided for any limitations;

(c) It is the provider's responsibility to maintain accurate and complete client records so that they are able to verify service eligibility. If a client is an established client, incomplete information through phone or electronic verification systems detailed in General Rules 410-120-1140 (Verification of Eligibility) does not absolve the provider's responsibilities of informing the client that their benefit of an eye exam for the purpose of prescribing glasses/contacts and the supply of glasses/contacts, has been exhausted;

(d) FCHPs: If the client is enrolled in an FCHP, the provider must contact the FCHP to find out what their policy is and if the client is eligible for services. Some FCHP's may decide to allow more frequent exams for the purpose of prescribing glasses/contacts and the supply of glasses/contacts. When calling the FCHP, the provider must inform the FCHP of the last date of service;

(e) Phone or electronic verification: Verify the last date of service for glasses/contacts as detailed in General Rules 410-120-1140 (Verification of Eligibility);

(f) SWEEP Optical: DMAP and several FCHPs contract with SWEEP Optical to provide vision materials. Regardless of verification received via phone or electronic sources, SWEEP Optical will not fill orders for clients that have received services in the past 24 months. When this happens:

(A) If the client is currently a fee-for-service client (not enrolled in an FCHP), DMAP will not pay for another pair of glasses/contacts (except when client has had cataract surgery within the last 120 days). If the client is not an established client of the provider and the client is currently a fee-for-service client, DMAP will reimburse the provider for the exam only;

(B) If the client is currently enrolled in an FCHP that has a contract with SWEEP Optical and the client received glasses/contacts through DMAP fee-for-service or through a previous FCHP who had a contract with SWEEP Optical, SWEEP Optical will refuse to fill the order. It is the provider's responsibility to contact the client's FCHP and give them the last

date of service and the current FCHP will determine if they want to allow for an additional supply of glasses/contacts. If the client is an established client, regardless of incomplete information through phone or electronic verification systems or SWEEP Optical it is the provider's responsibility to inform the FCHP of the last date of service;

(g) It is the provider's responsibility to verify eligibility for vision services prior to the initiation of the service. If any services are provided by SWEEP Optical and the client is not eligible, the provider is responsible for payment to SWEEP Optical (see the "Contracted Services" section of this guide). SWEEP Optical is prohibited by contract to sell materials and supplies for non-eligible clients at the State Contracted Price.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 11-2002, f. & cert. ef. 4-1-02; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08

410-140-0160
Contact Lens Services

(1) Coverage for Adults (age 21 or older):

(a) Prior Authorization (PA) is required for contact lenses for adults, except for the medical condition of Keratoconus. See OAR 410-140-0040, Prior Authorization, for information on requesting prior authorization;

(b) Contact lenses for adults are covered only when one of the following conditions exists:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus-contacts for Keratoconus do not require PA;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism; or

(E) Aphakia;

(c) Prescription and fitting of either contact lenses or glasses is limited to once every 24 months. Replacement of contact lenses is limited to a total of two contacts every 12 months, and does not require PA;

(d) Corneoscleral lenses are not covered.

(2) Coverage for Children (birth through age 20):

(a) Contact lenses for children are covered when it is documented in the clinical record that glasses cannot be worn for medical reasons, including, but not limited to:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus-contacts for Keratoconus do not require PA;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism; or

(E) Aphakia;

(b) Replacement of contact lenses is covered when documented as medically appropriate in the clinical record, and does not require PA;

(c) Corneoscleral lenses are not covered.

(3) General Information regarding contact lens coverage:

(a) Contact lenses for clients not enrolled in a Fully Capitated Health Plan must be billed to the Division of Medical Assistance Programs (DMAP) at the provider's acquisition cost. Acquisition cost is defined as the actual dollar amount paid by the provider to purchase the item directly from the manufacturer (or supplier) plus any shipping and/or postage for the item. Payment for contact lenses will be the lesser of the DMAP fee schedule or acquisition cost;

(b) The prescription for contact lenses includes specifying the optical and physical characteristics (such as power, size, curvature, flexibility, gas permeability);

(c) Fitting contact lenses includes instruction and training of the wearer and incidental revision of the lens during the training period;

(d) Follow-up of successfully fitted extended wear lenses is part of the general opthalmological service (such as office visits). Adaptation of contacts due to trauma or disease is not included as part of the general service. The client's record must show clear documentation of the trauma or disease to support additional reimbursement for follow-up visits;

(e) Contact lenses are not billed separately when used for treatment of disease, such as Keratoconus (sometimes referred to as a corneal bandage lens rather than for vision correction). Use 92070 for fitting of contact lens for treatment of disease which includes the supply of lenses. See OAR 410-140-0140 (Table 0140-1).

(4) Contact lens services:

(a) 92310, Prescription of optical and physical characteristics of and fitting of contact lens, with medical supervision of adaptation; corneal lens, both eyes; except for aphakia. Does not include the cost of the contact lenses. Prior authorization required for adults only; for Keratoconus use 92070;

(b) 92311, corneal lens for aphakia, one eye. Does not include the cost of the contact lenses;

(c) 92312, corneal lens for aphakia, both eyes. Does not include the cost of the contact lenses;

(d) 92325, Modification of contact lens (separate procedure), with medical supervision of adaptation; (e) V2510-Contact lens, gas permeable, spherical, per lens;

(f) V2511-Contact lens, gas permeable, toric or prism ballast, per lens;

(g) V2520-Contact lens, hydrophilic, spherical, per lens; and

(h) V2521-Contact lens, hydrophilic, toric or prism ballast, per lens.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0230; HR 37-1992, f. & cert. ef. 12-18-92; HR 5-1995, f. & cert. ef. 3-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 65-2004, f. 9-13-04, cert. ef. 10-1-04; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08

410-140-0260
Purchase of Ophthalmic Materials

(1) The Division of Medical Assistance Programs (DMAP) contracts with SWEEP Optical to buy materials (i.e., frames, lenses, specialty frames, and miscellaneous items). Rates for materials are negotiated by the Oregon Department of Administrative Services. All frames, lenses and miscellaneous items filled into these frames are to be provided only by SWEEP Optical. It is the provider's responsibility to verify the client's eligibility before ordering materials from SWEEP Optical.

(2) Adults (age 21 and older) are limited to either one complete pair of glasses (frame and lenses) or contact lenses every 24 months. See OAR 410-140-0160 for information on coverage of contact lenses.

(3) One pair of additional glasses is covered within 120 days following cataract surgery. When ordering glasses from SWEEP Optical for post-cataract surgery, mark the appropriate box indicating surgery was performed within 120 days.

(4) The purchase of glasses for children (birth through age 20) is covered when it is documented in the physician/optometrist's clinical record as medically appropriate.

(5) Ophthalmic materials that are not covered include, but are not limited to the following:

(a) Two pair of glasses in lieu of bifocals or trifocals in a single frame;

(b) Hand-held, low vision aids;

(c) Nonspectacle mounted aids;

(d) Single lens spectacle mounted low vision aids;

(e) Telescopic and other compound lens system, including distance vision telescopic, nearvision telescopes, and compound microscopic lens systems;

(f) Extra or spare pairs of glasses or contacts;

(g) Anti-reflective lens coating;

(h) U-V lens;

(i) Progressive and blended lenses;

(j) Bifocals and trifocals segments over 28mm including executive;

(k) Aniseikonia lenses;

(l) Sunglasses.

(6) Contractor Services: All materials and supplies (except for contact lenses) must be provided by SWEEP Optical including any frames purchased that are not in the contract.

(7) Frames not included in the contract with SWEEP Optical may be purchased through SWEEP Optical if there is an unusual circumstance or medical need that prevents the client from using any of the existing frames or lenses. For example: A client has an unusually large head size that requires a custom frame or a larger frame than provided in the contract. This does not imply that a client can select a frame that is not included in the contract because the providers's office does not carry the full selection of contract frames or that the client does not approve of the selection.

(8) Frames purchased that are not included in the contract require prior authorization. The provider working with the client should make every attempt to determine what frame will work and provide that information in writing to DMAP.

(9) If you need assistance with locating a frame to meet the client's need, you may contact SWEEP Optical's optician. Once the approval is granted, SWEEP Optical will order and process the glasses. Frames not included in the contract may exceed the limit of the required 7-10 calendar-day turn-around time frame.

(10) Scratch Coating is included in the lens service. Providers cannot charge scratch coating to DMAP, the Fully Capitated Health Plan or the client as a separate service.

(11) Prior Authorization (PA) for materials provided by SWEEP Optical:

(a) Materials which require PA must be medically necessary and include:

(A) Frames not in contract with SWEEP Optical (See Visual Services Supplemental Information for accessing frames catalog);

(B) Deluxe frames;

(C) Specialty lenses or lenses considered as "not otherwise classified" by HCPCS;

(D) Polycarb lenses, limited to:

(i) Children (birth through age 20);

(ii) Clients with developmental disabilities; and

(iii) Clients who are blind in one eye and need protection for the other eye, regardless of whether a vision correction is required;

(b) If DMAP approves PA, DMAP will send Notice of PA to SWEEP Optical, who then must submit a copy of the PA approval and confirmation number to the requesting provider;

(c) After receiving PA approval, the provider will submit the prescription to SWEEP Optical to be filled.

(12) PA for contact lenses — PA is required for adults (except for the treatment of injury or disease, including Keratoconus).

(13) Limitations: The provider is responsible to submit to SWEEP Optical specific, appropriate written documentation required for each service. It is the provider's responsibility to maintain proper documentation of services provided to each client. SWEEP Optical is not responsible if DMAP determines the documentation in the client's record does not allow for the service as directed by the limitations indicated in the administrative rules. The following services no longer require PA but are subject to strict limitations:

(a) Frames and lenses for adults age 21 and over are limited to once every 24 months. Glasses with a prescription that is equal to or less than +/- .25 diopters in both eyes are not covered;

(b) Replacement of frame fronts and temples for frames not in the SWEEP Optical contract (See Visual Services Supplemental Information for accessing frames catalog): Limited to frames that were not included in contract which were purchased with proper prior approval or when a client has a medical condition that requires the use of a specialty temple;

(c) Tints and Photochromic lenses: Limited to clients with documented albinism and pupillary defects. Appropriate documentation must be submitted to SWEEP Optical by a physician or an optometrist. The physician or optometrist must select and submit the most appropriate ICD-9-CM code to SWEEP Optical;

(d) Other medically necessary items for a contract frame (i.e., cable temples, head-strap frame), when a client has a medical condition that requires the use of a specialty temple, nose pieces, head strap frame. Appropriate documentation must be submitted to SWEEP Optical by a physician or an optometrist;

(e) Nonprescription glasses: Limited to clients that do not require any correction in one eye and where there is blindness in one eye. The purpose of this exception is to offer maximum protection for the remaining functional eye. Appropriate documentation must be submitted to SWEEP Optical by a physician or an optometrist;

(f) High Index Lenses:

(A) Power is +/- 10 or greater in any meridian in either eye; or

(B) Prism diopters are 10 or more diopters in either lens.

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 55-1983, f. 11-15-83, ef. 12-1-83; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0011; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0280; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 56-2002, f. & cert. ef. 10-1-02; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08

410-140-0320

Radiological Services

The Division of Medical Assistance Programs reimburses radiological services that are within the scope of practice of an optometrist or an ophthalmologist. Providers must bill the most appropriate CPT and modifier codes.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 15-1992, f. & cert. ef. 6-1-92; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08

410-140-0400

Contractor Services/Provider Ordering

(1) The Division of Medical Assistance Programs (DMAP) contracts with SWEEP Optical Laboratories (also referred to herein as contractor) to provide vision materials and supplies. Providers needing materials and supplies must order those directly from the contractor.

(2) Requesting provider's responsibilities:

(a) Requesting providers must check client eligibility prior to mailing or faxing an order to the contractor;

(b) Providers must use the appropriate order forms that can be obtained from the contractor. A copy of the order form is included in the Visual Services Supplemental Information found on this DMAP website: http://www.dhs.state.or.us/policy/healthplan/guides/vision/main.html;

(c) Providers must mail or fax written orders to the contractor using the address and fax number shown in the Visual Services Supplemental Information;

(d) Providers cannot request orders by telephone. The telephone number listed in the Visual Services Supplemental Information is for order inquiries or general information.

(3) Contractor's responsibilities:

(a) Order specifications:

(A) The contractor must provide the order as specified by the ordering provider;

(B) The contractor must pay for postage via US mail or UPS for all returned orders which are not to specifications of the order or that are damaged in shipping;

(C) While the contractor will not accept initial orders via telephone, the contractor must accept telephone calls or faxed messages regarding orders that are not made to specifications;

(D) When the contractor is notified of an item to be returned due to the item not being made to specifications in the original order, the contractor must begin remaking the product as soon as they are notified, whether or not they have received the item being returned. (The ordering provider must return the original product to the contractor with a written explanation of the problem and indicate the date the provider contacted the contractor to remake the order.);

(b) Original order delivery:

(A) The contractor must deliver the original order of materials and supplies to the ordering provider within 7 calendar days of the date the order is received;

(B) If there is an unavoidable delay causing the need for more turnaround time, the contractor must:

(i) Notify the ordering provider of the delay within 2 days of receipt of the order;

(ii) Document the reason for delay and the date the ordering provider was notified; and

(iii) Deliver delayed orders within a "reasonable" time.

(4) Neither the Contractor nor DMAP is responsible for expenses incurred due to "doctor's error" or "re-do's" (remake of materials or supplies not due to client's negligence).

(5) Contractor may use the date of order as the date of service (DOS) but may not bill DMAP until the order has been completed and shipped.

(6) Contractor must bill DMAP using HCPCS Codes listed in the contract agreement. Payment will be at contracted rates. Refer to Supplemental Information, found on the DMAP website, for billing instructions.

(7) The contractor must include eyeglass cases with every frame. Cases need not be included in orders for only lenses, temples or frame fronts.

(8) Contractor will provide display frames to the ordering provider at a cost not to exceed the contract cost. (9) Contractors will have unisex frame styles available, and will allow clients to choose any frame regardless of category listed (i.e. women may choose "Girls" frames).

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 37-1992, f. & cert. ef. 12-18-92, Renumbered from 461-018-0300; HR 15-1994, f. & cert. e.f 3-1-94; HR 5-1995, f. & cert. ef. 3-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 44-2001, f. 9-24-01 cert. ef. 10-1-01; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: July 2008 rule revisions — correct policies & procedures to comply with Federal requirements.
Adm. Order No.: DMAP 22-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008

Rules Amended: 410-141-0260, 410-141-0261, 410-141-0262, 410-141-0263, 410-141-0264, 410-141-0265
Subject: The Oregon Health Plan (OHP) Managed Care program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to clients. DMAP amended rules listed above to comply with the federal requirements and resolution time frames regarding appeals and access to Administrative Hearings for clients who are enrolled with Managed Care. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0260
Oregon Health Plan Prepaid Health Plan Grievance System: PHP Complaint and Appeal Procedures

(1) Definitions:

(a) Action — In the case of a PHP:

(A) The denial or limited authorization of a requested covered service, including the type or level of service;

(B) The reduction, suspension or termination of a previously authorized service;

(C) The denial in whole or in part, of payment for a service;

(D) The failure to provide services in a timely manner, as defined by the Division of Medical Assistance Programs (DMAP);

(E) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(F) For a DMAP Member in a single PHP Service Area, the denial of a request to obtain covered services outside of the PHP's Participating Provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(b) Appeal — A request by a DMAP Member or Representative for review of an "Action" as defined in this Section;

(c) Complaint — A DMAP Member's or DMAP Member's Representative's expression of dissatisfaction to a PHP or to a Practitioner about any matter other than an Action, as "Action" is defined in this section;

(d) Grievance System — The overall system that includes a Complaint process, an Appeals process and access to the DMAP Administrative Hearing process.

(2) The purpose of OAR 410-141-0260 through 410-141-0266 is to describe the requirements for the overall Grievance System. These rules will apply to all PHPs as defined in OAR 410-141-0000.

(3) All PHPs shall have written policies and procedures for a Grievance System that ensures that they meet the requirements of sections OAR 410-141-0260 to 410-141-0266.

(4) Information provided to the DMAP Member shall include at least:

(a) Written material describing the PHP's Complaint and Appeal procedures, and how to make a Complaint or file an Appeal; and

(b) Assurance in all written, oral, and posted material of DMAP Member confidentiality in the Complaint and Appeal processes.

(5) A DMAP Member or a DMAP Member's Representative may file a Complaint and a PHP level Appeal orally or in writing, and may request a DMAP Administrative Hearing.

(6) PHPs shall keep all information concerning a DMAP Member's Complaint or Appeal confidential as specified in OAR 410-141-0261 and 410-141-0262.

(7) Consistent with confidentiality requirements, the PHP's staff person who is designated to receive Complaints or Appeals, shall begin to obtain documentation of the facts concerning the Complaint or Appeal upon receipt of the Complaint or Appeal.

(8) PHPs shall afford DMAP Members full use of the Grievance System procedures. If the DMAP Member decides to pursue a remedy through the DMAP Administrative Hearing process, the PHP will cooperate by providing relevant information required for the hearing process.

(9) A request for a DMAP Administrative Hearing made to DMAP outside of the PHP's Appeal procedures, or without previous use of the PHP's Appeal procedures shall be reviewed by the PHP through the PHP's Appeal process upon notification by DMAP as provided for in OAR 410-141-0264.

(10) Under no circumstances may a PHP discourage a DMAP Member or a DMAP Member's Representative from using the DMAP Administrative Hearing process.

(11) Neither implementation of a DMAP hearing decision nor a DMAP Member's request for a hearing may be a basis for a request by the PHP for a DMAP member's disenrollment.

(12) PHPs shall make available a supply of blank Complaint forms (OMAP 3001) in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to Complaints or Appeals. PHPs shall make available a supply of blank Administrative Hearing Request forms (DHS 443) and the Notice of Hearing Rights forms (DMAP 3030). PHPs shall develop an Appeal form and shall make the appeal forms, along with the DHS 443 and DMAP 3030 forms, available in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to Complaints or Appeals.

(13) The PHP must provide information about the Grievance System to all participating providers and subcontractors at the time they enter into a contract.

(14) The PHP must maintain logs that are in compliance with OAR 410-141-0266 to document Complaints and Appeals received by the PHP, and the State must review the information as part of the State quality strategy.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.725
Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert.ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08

410-141-0261
PHP Complaint Procedures

(1) A Complaint procedure applies only to those situations in which the Division of Medical Assistance Programs (DMAP) Member or their representative expresses concern or dissatisfaction about any matter other than an "Action." PHPs shall have written procedures to acknowledge the receipt, disposition and documentation of each Complaint from DMAP Members. The PHP's written procedures for handling Complaints, shall, at a minimum:

(a) Address how the PHP will accept, process and respond to each Complaint from a DMAP Member or their Representative, including:

(A) Acknowledgment to the DMAP Member or representative of receipt of each Complaint;

(B) Ensuring that DMAP Members who indicate dissatisfaction or concern are informed of their right to file a Complaint and how to do so;

(C) Ensuring that each Complaint is transmitted timely to staff having authority to act upon it;

(D) Ensuring that each Complaint is investigated and resolved in accordance with these rules; and

(E) Ensuring that the Practitioner(s) or staff person(s) who make decisions on the Complaint must be persons who are:

(F) Not involved in any previous level of review or decision-making; and

(G) Who are health care professionals who have appropriate clinical expertise in treating the DMAP Member's condition or disease if the Complaint concerns denial of expedited resolution of an Appeal or if the Complaint involves clinical issues:

(b) Describe how the PHP informs DMAP Members, both orally and in writing, about the PHP's Complaint procedures;

(c) Designate the PHP staff member(s) or a designee who will be responsible for receiving, processing, directing, and responding to Complaints;

(d) Include a requirement for Complaints to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(2) The PHP must provide DMAP Members with any reasonable assistance in completing forms and taking other procedural steps related to filing and disposition of a Complaint. This includes, but is not limited to, providing interpreter services and toll free phone numbers that have adequate TTY/TTD and interpreter capabilities.

(3) The PHP shall assure DMAP Members that Complaints are handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The PHP shall safeguard the DMAP Member's right to confidentiality of information about the Complaint as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning a DMAP Member's Complaint is kept confidential, consistent with appropriate use or disclosure as treatment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any Practitioner whose services, items or quality of care is alleged to be involved in the Complaint have a right to use this information for purposes of the PHP resolving the

Complaint, for purposes of maintaining the log required in OAR 410-141-0266, and for health oversight purposes, without a signed release from the DMAP Member;

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the DMAP Member to authorize a release of information regarding the Complaint to other individuals as needed for resolution. Before any information related to the Complaint is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the Complaint file. Copies of the form for obtaining the release of information shall be included in the PHP's written process.

(4) The PHPs procedures shall provide for the disposition of Complaints within the following timeframes:

(a) The PHP must resolve each Complaint, and provide notice of the disposition, as expeditiously as the DMAP Member's health condition requires, within the timeframes established in this rule;

(b) For standard disposition of Complaints and notice to the affected parties, within 5 working days from the date of the PHP's receipt of the Complaint, the PHP must either:

(A) Make a decision on the Complaint and notify the DMAP Member; or

(B) Notify the DMAP Member in writing that a delay in the PHP's decision of up to 30 calendar days from the date the Complaint was received by the PHP is necessary to resolve the Complaint. The PHP shall specify the reasons the additional time is necessary.

(5) The PHP's decision about the disposition of a Complaint shall be communicated to the DMAP Member orally or in writing within the timeframes specified in (4) of this rule:

(a) An oral decision about a Complaint shall address each aspect of the DMAP Member's Complaint and explain the reason for the PHP's decision;

(b) A written decision must be provided if the Complaint was received in writing. The written decision on the Complaint shall review each element of the DMAP Member's Complaint and address each of those concerns specifically, including the reasons for the PHP's decision.

(6) All Complaints made to the PHP's staff person designated to receive Complaints shall be entered into a log and addressed in the context of Quality Improvement activity (OAR 410-141-0200) as required in OAR 410-141-0266.

(7) All Complaints that the DMAP Member chooses to resolve through another process, and that the PHP is notified of, shall be noted in the Complaint log.

(8) DMAP Members who are dissatisfied with the disposition of a Complaint may present their complaint to the Governors Advocacy Office.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08

410-141-0262

The PHP Appeal Procedures

(1) A Division of Medical Assistance Programs (DMAP) Member or their representative that disagrees with a Notice of Action may file a PHP level appeal or request a DMAP Administrative Hearing. DMAP Members may not be required to go through a PHP level appeal in order to request a DMAP Administrative Hearing.

(2) The PHP must have a system in place for DMAP Members that includes an Appeal process when a DMAP Member has requested a DMAP Administrative Hearing. For purposes of this rule, an Appeal includes a request to the PHP for review of an Action upon notification from DMAP.

(3) An Appeal must be filed with the PHP no later than 45 calendar days from the date on the Notice of Action required under OAR 410-141-0263.

(4) If the DMAP Member initiates an Appeal directly with the PHP, it shall be documented in writing by the PHP and handled as an Appeal consistent with this rule. The DMAP Member or DMAP Member's Representative may file an Appeal with the PHP either orally or in writing and, unless he or she requests expedited resolution, must follow an oral filing with a written and signed Appeal.

(5) Each PHP must adopt written policies and procedures for handling Appeals that, at a minimum, meet the following requirements:

(a) Give DMAP Members any reasonable assistance in completing forms and taking other procedural steps related to filing and resolution of an Appeal or Administrative Hearings request. This includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capacity;

(b) Address how the PHP will accept, process and respond to such Appeals, including how the PHP will acknowledge receipt of each Appeal;

(c) Ensuring that DMAP Members who receive a Notice of Action described in OAR 410-141-0263 are informed of their right to file an Appeal and an Administrative Hearing request and how to do so;

(d) Ensuring that each Appeal is transmitted timely to staff having authority to act on it;

(e) Ensuring that each Appeal is investigated and resolved in accordance with these rules; and

(f) Ensuring that the individuals who make decisions on Appeals are individuals:

(A) Who were not involved in any previous level of review or decision making; and

(B) Who are health care professionals who have the appropriate clinical expertise in treating the DMAP Member's condition or disease if an Appeal of a denial is based on lack of Medical Appropriateness or if an Appeal involves clinical issues:

(g) Include a requirement for Appeals to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(6) The PHP shall assure DMAP Members that Appeals are handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The PHP shall safeguard the DMAP Member's right to confidentiality of information about the Appeal as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning a DMAP Member's Appeal is kept confidential consistent with appropriate use or disclosure as treatment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any Practitioner whose authorization, treatment, services, items, quality of care, or request for payment is alleged to be involved in the Appeal have a right to use this information for purposes of resolving the Appeal and for purposes of maintaining the log required in OAR 410-141-0266 and for health oversight purposes by DMAP, without a signed release from the DMAP Member. The Administrative Hearing regarding the Appeal without a signed release from the DMAP Member, pursuant to OAR 410-120-1360(4);

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the DMAP Member to authorize a release of information regarding the Appeal to other individuals. Before any information related to the Appeal is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the Appeal file.

(7) The process for Appeals must:

(a) Provide that oral inquiries seeking to Appeal an Action are treated as Appeals (to establish the earliest possible filing date for the Appeal) and must be confirmed in writing, unless the DMAP Member or DMAP Member's Representative requests expedited resolution;

(b) Provide the DMAP Member a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. (The PHP must inform the DMAP Member or the DMAP Member's Representative of the limited time available in the case of an expedited resolution);

(c) Provide the DMAP Member and/or the DMAP Member's Representative an opportunity, before and during the Appeals process, to examine the DMAP Member's file, including medical records and any other documents or records to be considered during the Appeals process; and

(d) Include as parties to the Appeal the DMAP Member, the DMAP Member's Representative, or the legal Representative of a deceased DMAP Member's estate;

(8) The PHP must resolve each Appeal and provide a client notice of the Appeal resolution as expeditiously as the DMAP Member's health condition requires and within the time frames in this section:

(a) For the standard resolution of Appeals and client notices to the DMAP Member and/or DMAP Member's Representative, the PHP shall resolve the Appeal and provide a client notice no later than 16 calendar days from the day the PHP receives the Appeal. This timeframe may be extended pursuant to subsection (c) of this section;

(b) When the PHP has granted a request for expedited resolution of an Appeal, the PHP shall resolve the Appeal and provide a client notice no later than 3 working days after the PHP receives the Appeal. This timeframe may be extended pursuant to subsection (c) of this section;

(c) The PHP may extend the timeframes from subsections (a) or (b) of this section by up to 14 calendar days as approved by the DMAP Hearings Unit Staff if:

(A) The DMAP Member or DMAP Members Representative requests the extension; or

(B) The PHP shows (to the satisfaction of the DMAP Hearings Unit upon its request) that there is need for additional information and how the delay is in the DMAP Member's interest:

(d) If the PHP extends the timeframes, it must, for any extension not requested by the DMAP Member, give the DMAP Member or DMAP Members Representative a written notice of the reason for the delay.

(9) For all Appeals, the PHP must provide written Notice of Appeal Resolution to the DMAP Member or their Representative. If the PHP knows that there is a Representative, the PHP must send a copy of the Notice to the Representative. For notice on an expedited resolution, the PHP must also make reasonable efforts to provide oral notice.

(10) The written Notice of Appeal Resolution must include the following:

(a) The results of the resolution process and the date it was completed; and

(b) For Appeals not resolved wholly in favor of the DMAP Member, the notice must also include the following information:

(A) Reasons for the resolution and a reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Appeal Resolution relied upon to deny the Appeal;

(B) Unless the Appeal was referred to the PHP from DMAP as part of an Administrative Hearings process, the right to request a DMAP Administrative Hearing, and how to do so, which includes attaching the "Notice of Hearing Rights (DMAP 3030) and the Hearing Request Form (DHS 443);

(C) The right to request to receive benefits while the hearing is pending, and how to make the request; and

(D) That the DMAP Member may be held liable for the cost of those benefits if the hearing decision upholds the PHP's Action.

(11) Unless the Appeal was referred to the PHP as part of an Administrative Hearing process, a DMAP Member may request a DMAP Administrative Hearing not later than 45 calendar days from the date on the Notice of Appeal Resolution. The parties to the DMAP Administrative Hearing include the PHP as well as the DMAP Member and/or DMAP Member's Representative, or the Representative of the deceased DMAP Member's estate.

(12) Each PHP shall establish and maintain an expedited review process for Appeals, consistent with OAR 410-141-0265.

(13) Each PHP shall maintain records of Appeals, enter Appeals and their resolution into a log, and address the Appeals in the context of Quality Improvement activity (OAR 410-141-0200) as required in OAR 410-141-0266.

(14) Continuation of benefits pending Appeal:

(a) As used in this section, "timely" filing means filing on or before the later

of the following:

(A) Within 10 calendar days of the PHP mailing the Notice of Action; or

(B) The intended effective date of the PHP's proposed Action:

(b) The PHP must continue the DMAP Member's benefits if:

(A) The DMAP Member or DMAP Member's Representative files the Appeal or Administrative Hearing Request timely;

(B) The Appeal or Administrative Hearing Request involves the termination, suspension, or reduction of a previously authorized course of treatment;

(C) The services were ordered by an authorized Provider;

(D) The original period covered by the original authorization has not expired; and

(E) The DMAP Member or Representative requests extension of benefits:

(c) Continuation of benefits pending Administrative Hearing — If, at the DMAP Member's request, the PHP continues or reinstates the DMAP Member's benefits while the Appeal or Administrative Hearing is pending , the benefits must be continued pending Administrative Hearing pursuant to OAR 410-141-0264.

(15) If the final resolution of the Appeal or Administrative Hearing is adverse to the DMAP Member, that is, upholds the PHP's Action, the PHP may recover the cost of the services furnished to the DMAP Member while the Appeal or Administrative Hearing was pending, to the extent that they were furnished solely because of the requirements of this section and in accordance with the policy set forth in 42 CFR 431.230(b).

(16) If the PHP or a DMAP Administrative Hearing decision reverses a decision to deny, limit, or delay services that were not furnished while the Appeal was pending, the PHP must authorize or provide the disputed services promptly, and as expeditiously as the DMAP Member's health condition requires.

(17) If the PHP or the DMAP Administrative Hearing decision reverses a decision to deny authorization of services, and the DMAP Member received the disputed services while the Appeal was pending, the PHP or DMAP must pay for the services in accordance with DMAP policy and regulations.

(18) If the Appeal was referred to the PHP from DMAP as part of an Administrative Hearing process, the PHP must immediately (within two business days) transmit the Notice of Appeal Resolution and the complete record of the Appeal to the DMAP Hearings Unit.

(19) If the Appeal was made directly by the DMAP Member or Representative, and if the Notice of Appeal Resolution was not favorable to the DMAP Member, the PHP must: Retain a complete record of the Appeal for not less then 45 days so that, if an Administrative Hearing is requested, the record can be submitted to DMAP Hearings Unit within two business days of DMAP's request.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08

410-141-0263

Notice of Action by a Prepaid Health Plan

(1) When a PHP (or authorized Practitioner acting on behalf of the PHP) takes or intends to take any Action, including but not limited to denials or limiting prior authorizations of a requested covered service(s) in an amount, duration, or scope that is less than requested, or reductions, suspension, discontinuation or termination of a previously authorized service, or any other Action, the PHP (or authorized Practitioner acting on behalf of the PHP) shall mail a written client Notice of Action in accordance with section (2) of this rule to the Division of Medical Assistance Programs (DMAP) Member within the timeframes specified in subsection (3) of this rule.

(2) The written client Notice of Action must be a DMAP approved format and it must be used for all denials of a requested covered service(s), reductions, discontinuations or terminations of previously authorized services, denials of claims payment, or other Action. The client Notice of Action must meet the language and format requirements of 42 CFR 438.10(c) and (d) and shall inform the DMAP Member of the following:

(a) Relevant information shall include, but is not limited to, the following:

(A) Date of client Notice of Action;

(B) PHP name;

(C) PCP/PCD name;

(D) DMAP Member's name and ID number;

(E) Date of service or item requested or provided;

(F) Who requested or provided the item or service; and

(G) Effective date of the Action;

(b) The Action the PHP or its Participating Provider has taken or intends to take;

(c) Reasons for the Action, including but not limited to the following reasons:

(A) Treatment is not covered;

(B) The item requires pre-authorization and it was not pre-authorized;

(C) The service is not Dentally or Medically Appropriate;

(D) The service or item is received in an emergency care setting and does not qualify as an Emergency Service under the prudent layperson standard;

(E) The person was not a DMAP Member at the time of the service or is not a DMAP Member at the time of a requested service; and

(F) The Provider is not on the PHP's panel and prior approval was not obtained (if such prior authorization would be required under the Oregon Health Plan Rules):

(d) A reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Action pursuant to subsection (b) of this section, in compliance with the notice requirements in ORS 183.415(2)(c);

(e) The DMAP Member's right to file an Appeal with the PHP and how to exercise that right as required in OAR 410-141-0262;

(f) The DMAP Member's right to request a DMAP Administrative Hearing and how to exercise that right. A copy of a Hearing Request Form (DHS 443) and Notice of Hearing Rights (DMAP 3030) must be attached to the Notice of Action;

(g) The circumstances under which expedited Appeal resolution is available and how to request it;

(h) The DMAP Member's right to have benefits continue pending resolution of the Appeal, how to request that benefit(s) be continued, and the circumstances under which the DMAP Member may be required to pay the costs of these services; and

(i) The telephone number to contact the PHP for additional information.

(3) The PHP or Practitioner acting on behalf of the PHP must mail the Notice of Action within the following time frames:

(a) For termination, suspension, or reduction of previously authorized OHP covered services, the following time frames apply:

(A) The notice must be mailed at least 10 calendar days before the date of Action, except as permitted under subsections (B) or (C) of this section;

(B) The PHP (or authorized Practitioner acting on behalf of the PHP) may mail a notice not later than the date of Action if:

(i) The PHP or Practitioner receives a clear written statement signed by the DMAP Member that he or she no longer wishes services or gives information that requires termination or reduction of services and indicates that he or she understands that this must be the result of supplying the information;

(ii) The DMAP Member has been admitted to an institution where he or she is ineligible for covered services from the PHP;

(iii) The DMAP Member's whereabouts are unknown and the post office returns PHP or Practitioner's mail directed to him or her indicating no forwarding address;

(iv) The PHP establishes the fact that another State, territory, or commonwealth has accepted the DMAP Member for Medicaid services;

(v) A change in the level of medical or dental care is prescribed by the DMAP Member's PCP or PCD; or

(vi) The date of Action will occur in less than 10 calendar days, in accordance with 42 CFR 483.12(a)(5)(ii), related to discharges or transfers and long-term care facilities:

(C) The PHP may shorten the period of advance notice to 5 calendar days before the date of the Action if the PHP has facts indicating that an Action should be taken because of probable fraud by the DMAP Member. Whenever possible, these facts should be verified through secondary sources:

(b) For denial of payment, at the time of any Action affecting the claim;

(c) For standard prior authorizations that deny a requested service or that authorize a service in an amount, duration, or scope that is less than requested, the PHP must provide Notice of Action as expeditiously as the DMAP Member's health condition requires and within 14 calendar days following receipt of the request for service, except that:

(A) The PHP may have a possible extension of up to 14 additional calendar days if the DMAP Member or the Provider requests the extension; or if the PHP justifies (to DMAP upon request) a need for additional information and how the extension is in the DMAP Member's interest;

(B) If the PHP extends the timeframe, in accordance with subsection (A) of this section, it must give the DMAP Member written notice of the reason for the decision to extend the timeframe and inform the DMAP Member of their right to file a Complaint if he or she disagrees with that decision. The PHP must issue and carry out its prior authorization determination as expeditiously as the DMAP Member's health condition requires and no later than the date the extension expires:

(d) For prior authorization decisions not reached within the timeframes specified in subsection (c) of this section, (which constitutes a denial and is thus an adverse Action), on the date that the timeframes expire;

(e) For expedited prior authorizations, within the timeframes specified in OAR 410-141-0265.

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

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08

410-141-0264

Administrative Hearings

(1) An individual who is or was a Division of Medical Assistance Programs (DMAP) Member at the time of the Notice of Action is entitled to an Administrative Hearing by DMAP if a PHP that has denied requested services, payment of a claim, or terminates, discontinues or reduces a course of treatment, or any other Action.

(a) If the DMAP Member initiates an Administrative Hearing directly with DMAP, the decision in the Notice of Action is the document that will trigger the right to request a state administrative hearing:

(b) If the DMAP Member requests an Administrative Hearing after receiving a Notice of Appeal Resolution, the decision in the Notice of Appeal Resolution is the document that will trigger the right to request a state administrative hearing:

(c) Client Administrative Hearings are governed by OAR 410-120-1860, 410-120-1865, and this rule.

(2) A written hearing request must be received by the Hearings Unit at DMAP not later than the 45th day following the date of the Notice of Action, or if the hearing request was initiated after an Appeal, not later then the 45th day following the Notice of Appeal Resolution.

(3) If, at the DMAP Member's request, the PHP continued or reinstated services while an Appeal was pending, the benefits must be continued pending the Administrative Hearing until one of the following occurs:

(a) The DMAP Member withdraws the request for an Administrative Hearing;

(b) Ten calendar days pass after the PHP mails the Notice of Appeal Resolution, providing the resolution of the Appeal against the DMAP Member, unless the DMAP Member within the 10-day timeframe, has requested a DMAP Administrative Hearing with continuation of benefits until the DMAP Administrative Hearing decision is reached;

(c) A final order is issued in a DMAP Administrative Hearing adverse to the DMAP Member; or

(d) The time period or service limits of a previously authorized service have been met.

(4) The DMAP Representative shall review the Administrative Hearing request, documentation related to the Administrative Hearing issue, and computer records to determine whether the claimant or the person for whom the request is being made is or was a DMAP Member at the time the Action was taken, and whether the hearing request was timely.

(5) PHPs shall immediately transmit to DMAP any Administrative Hearing request submitted on behalf of a DMAP Member, including a copy of the DMAP Member's Notice of Action and, if applicable, Notice of Appeal Resolution.

(6) If the DMAP Member files a request for an Administrative Hearing with DMAP, DMAP will send a copy of the hearing request to the PHP.

(7) PHPs shall review an Administrative Hearing Request, which has not been previously received or reviewed as an Appeal, using the PHP's Appeal process as follows:

(a) The Appeal shall be reviewed immediately and shall be resolved, if possible, within 16 calendar days, pursuant to OAR 410-141-0262;

(b) The PHP's Notice of Appeal Resolution shall be in writing and shall be provide to the DMAP Member.

(8) When an Administrative Hearing is requested by a DMAP Member, the PHP shall cooperate with providing relevant information required for the hearing process to DMAP, as well as the results of the review by the PHP of the Appeal and the Administrative Hearing request, and any attempts at resolution by the PHP.

(9) Information about DMAP Members used for Administrative Hearings is handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. DMAP will safeguard the DMAP Member's right to confidentiality of information used in the Administrative Hearing as follows:

(a) DMAP, the DMAP Member and their representative, the PHP and any Practitioner whose authorization, treatment, services, items, or request for payment is involved in the Administrative Hearing have a right to use this information for purposes of resolving the Administrative Hearing without a signed release from the DMAP Member. DMAP may also use this information, pursuant to OAR 410-120-1360(4), for health oversight purposes, and for other purposes authorized or required by law. The information may also be disclosed to the Office of Administrative Hearings and the Administrative Law Judge assigned to the Administrative Hearing, and to the Court of Appeals if the DMAP Member seeks judicial review of the final order;

(b) Except as provided in subsection (a), DMAP will ask the DMAP Member to authorize a release of information regarding the Administrative Hearing to other individuals. Before any information related to the Administrative Hearing is disclosed under this subsection, DMAP must

have an authorization for release of information documented in the Administrative Hearing file.

(10) The hearings request (DHS 443), along with the Notice of Appeal Resolution, shall be referred to the Office of Administrative Hearings and the hearing will be scheduled.

(a) The parties to the Administrative Hearing shall include the PHP, as well as the DMAP Member and his or her Representative, or the Representative of a deceased DMAP Member's estate;

(b) The procedures applicable to the Administrative Hearing shall be conducted consistent with OAR 410-120-1860 and 410-120-1865;

(c) A final order should be issued or the case otherwise resolved by DMAP ordinarily within 90 calendar days from the earlier of the following: the date the DMAP member requested a PHP appeal (not including the number of days the DMAP member took to subsequently file for a DMAP Administrative Hearing, or the date the DMAP Member filed for direct access to a DMAP Administrative Hearing. The final order is the final decision of DMAP.

(11) If the final resolution of the Administrative Hearing is adverse to the DMAP Member, that is, if the final order upholds the PHP's Action, the PHP may recover the cost of the services furnished to the DMAP Member while the Administrative Hearing is pending, to the extent that they were furnished solely because of the requirements of this section, and in accordance with the policy set forth in 42 CFR 438.420.

(12) The PHP must promptly correct the Action taken up to the limit of the original request or authorization, retroactive to the date the Action was taken, if the hearing decision is favorable to the DMAP Member, or DMAP and/or the PHP decides in the DMAP Member's favor before the hearing even if the DMAP Member has lost eligibility after the date the Action was taken:

(a) If the PHP, or a DMAP hearing decision reverses a decision to deny, limit, or delay services that were not furnished while the Administrative Hearing was pending, the PHP must authorize or provide the disputed services promptly, and as expeditiously as the DMAP Member's health condition requires;

(b) If the PHP, or the DMAP hearing decision reverses a decision to deny authorization of services, and the DMAP Member received the disputed services while the Administrative Hearing was pending, the PHP must pay for the services in accordance with DMAP policy and regulations in effect when the request for services was made by the DMAP Member.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08

410-141-0265
Request for Expedited Appeal or Expedited Administrative Hearing

(1) Each PHP shall establish and maintain an expedited review process for Appeals, when the PHP determines (upon request from the Division of Medical Assistance Programs (DMAP) Member) or the Provider indicates (in making the request on a DMAP Member's behalf or supporting the DMAP Member's request) that taking the time for a standard resolution could seriously jeopardize the DMAP Member's life, health, or ability to attain, maintain or regain maximum function.

(2) The PHP must ensure that punitive action is not taken against a Provider who requests an expedited resolution or supports a DMAP Member's Appeal.

(3) If the PHP provides an expedited Appeal, but denies the services or items requested in the expedited Appeal, the PHP shall inform the DMAP Member of the right to request an expedited Administrative Hearing and shall provide the DMAP Member with a copy of both the Hearing Request Form (DHS 443) and Notice of Hearing Rights (DMAP 3030) with the Notice of Appeal Resolution.

(4) If the PHP denies a request for expedited resolution on Appeal, it must:

(a) Transfer the Appeal to the time frame for standard resolution in accordance with OAR 410-141-0262;

(b) Make reasonable efforts to give the DMAP Member prompt oral notice of the denial, and follow-up within 2 calendar days with a written notice.

(5) A DMAP Member who believes that taking the time for a standard resolution of a request for an Administrative Hearing could seriously jeopardize the DMAP Member's life or health or ability to attain, maintain or regain maximum function may request an expedited Administrative Hearing.

(6) The PHP shall submit relevant documentation to the DMAP Medical Director within, as nearly as possible, 2 working days for a decision as to the necessity of an expedited Administrative Hearing. The DMAP Medical Director shall decide within, as nearly as possible, 2 working days from the date of receiving the medical documentation applicable to the request, whether that DMAP Member is entitled to an expedited Administrative Hearing.

(7) If the DMAP Medical Director denies a request for expedited Administrative Hearing, DMAP must:

(a) Handle the request for Administrative Hearing in accordance with OAR 410-141-0264; and

(b) Make reasonable efforts to give the DMAP Member prompt oral notice of the denial, and follow-up within 2 calendar days with a written notice.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: Technical changes to the October 1, 2005 (–07) Health Services Commission's Prioritized List of Health Services Purposes.
Adm. Order No.: DMAP 23-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-141-0520
Subject: The Oregon Health Plan (OHP-Division 141) administrative rules govern payment for the Division of Medical Assistance Programs' payments for services provided to clients. Having temporarily amended 410-141-0520 on April 1, 2008, DMAP permanently amended the rule to reference the additional interim modifications and technical changes effective April 1, 2008 to the biennial January 1, 2008–December 31, 2009 Prioritized List of Health Services effective January 1, 2008. The April 1, 2008 interim modifications and technical changes include application of 2008 national code to the HSC lines and HSC guideline refinements. Text may be revised for readability and "housekeeping" corrections as needed.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520
Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: www.oregon.gov/DHS/healthplan/priorlist/main, or, for a hardcopy contact the Office of Oregon Health Policy and Research. Effective January 1, 2008, this rule incorporates by reference the CMS approved Biennial January 1, 2008-December 31, 2009 Prioritized List, including technical revisions and interim modifications effective April 1, 2008, expanded definitions, and practice guidelines that are available on the HSC website.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

(4) Effective January 1, 2008, the January 1, 2008-December 31, 2009 Prioritized List, with technical revisions and interim modifications effective April 1, 2008, is in effect and condition treatment pairs through line 503 are funded.

Stat. Auth.: SB 163 (2007), OL 2007, Ch. 798, ORS 409.010 & 409.050
Stats. Implemented: ORS 414.065, 414.727, 414.050, 414.010, 192.518 - 192.526
Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert.

ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: July 2008 — Technical and housekeeping changes.
Adm. Order No.: DMAP 24-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-146-0200, 410-146-0380, 410-146-0440
Subject: The American Indian/Alaska Native Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to detain clients. DMAP amended 410-146-0200, 410-146-0380 and 410-146-0440 to ensure that current policies and procedures for AI/AN providers are clear and accurate. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-146-0200
Pharmacy

(1) As defined by the Division of Medical Assistance Programs (DMAP), a valid encounter excludes pharmaceutical or biologicals not generally provided during a clinic visit. Refer to OAR 410-146-0085 DMAP Encounter and Recognized Practitioners:

(a) Because DMAP includes the costs for drugs or medication treatments dispensed by a clinic to treat a client during an office visit in the calculation of the all-inclusive encounter rate for the office visit, providers cannot bill separately for the cost of drugs or medication treatments;

(b) Because pharmacy services are not eligible under the Memorandum of Agreement (MOA) for reimbursement at the IHS or a cost-based encounter rate prescriptions are not included in the calculation of the encounter rate. To bill for filled prescriptions, the AI/AN facility's qualified enrolled pharmacy must bill DMAP through the pharmacy program.

(2) AI/AN providers may directly bill DMAP only for contraceptive supplies and contraceptive medications outside of the pharmacy program:

(a) For clients enrolled with a Prepaid Health Plan (PHP): AI/AN providers must bill the PHP first. If the PHP will not reimburse for the contraceptive supply or contraceptive medication, then the clinic can bill DMAP fee-for-service at the clinic's acquisition cost. See also OAR 410-130-0585, Family Planning Services;

(b) For clients not enrolled with a PHP: AI/AN providers can directly bill DMAP fee-for-service at the clinic's acquisition cost for contraceptive supplies and contraceptive medications. See also OAR 410-130-0585, Family Planning Services.

(3) Refer to OAR 410 Division 121, Pharmaceutical Services Program Rulebook for specific information.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 39-2002, f. 9-13-02, cert. ef. 9-15-02; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 24-2008, f. 6-13-08, cert. ef. 7-1-08

410-146-0380
OHP Standard Emergency Dental Benefit

(1) Clients with the OHP Standard benefit package have a limited dental benefit. The intent of the OHP Standard Emergency Dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth. Services are limited to the treatment of conditions listed in Oregon Administrative Rule (OAR) 410-123-1670(3) OHP Standard Limited Emergency Dental Benefit.

(2) Hospital Dentistry is not a covered benefit for the OHP Standard population, except for clients specified in OAR 410-123-1670(4).

(3) Dental services for the OHP Standard population are limited to those procedures listed in OAR 410-123-1260, Table 123-1260-1.

(4) Any limitations or prior authorization requirements for services listed in OARs 410-123-1160 and 410-123-1260 will also apply to services in the OHP Standard benefit when provided by an AI/AN provider.

(5) An AI/AN provider billing Division of Medical Assistance Programs (DMAP) directly for dental services provided to an open card OHP Standard client, must bill the covered service(s) in accordance with Sections (1) through (4) of this rule, using a dental procedure code as listed in Table 146-0085-1, American Indian/Alaska Native (AI/AN) Tribal Program Encounter Codes & Modifiers.

(6) An AI/AN provider is not limited to the AI/AN Tribal Program encounter procedure codes listed in Table 146-0085-1 when billing a Dental Care Organization (DCO), Medicare, or any other Third Party Resource (TPR).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 24-2008, f. 6-13-08, cert. ef. 7-1-08

410-146-0440
Managed Care Supplemental Payments

(1) Effective January 1, 2001, the Division of Medical Assistance Programs (DMAP) is required by 42 USC 1396a(bb), to make supplemental payments to eligible Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) that contract with Prepaid Health Plans (PHP). AI/AN providers that are not FQHCs, and that elect to receive payment under Title XIX and XXI according to the IHS rate under the Memorandum of Agreement effective July 11, 1996 will also be eligible to receive supplemental payments in the same manner as an FQHC under 1902(bb)(5).

(2) AI/AN providers reimbursed according to a cost-based rate under the Prospective Payment System (PPS) are directed to Oregon Administrative Rule (OAR) 410-147-0460 Prepaid Health Plan Supplemental Payments.

(3) The PHP Supplemental Payment represents the difference, if any, between the payment received by the AI/AN provider from the PHP(s) for treating the PHP enrollee and the payment to which the AI/AN provider would be entitled if they had billed DMAP directly for these encounters according to the clinic's IHS rate. Refer to OAR 410-146-0020.

(4) In accordance with federal regulations, the provider must take all reasonable measures to ensure that in most instances, with the exception of IHS, Medicaid will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before submitting claims to the PHP. Refer to OAR 410-120-1140 Verification of Eligibility.

(5) When any other coverage is known to the provider, the provider must bill the other resource(s) prior to billing the PHP. When a provider receives a payment from any source prior to the submission of a claim to the PHP, the amount of the payment must be shown as a credit on the claim in the appropriate field. See also OAR 410-120- 1280 Billing and 410-120-1340 Payment.

(6) Supplemental payment by DMAP for encounters submitted by AI/AN providers for purposes of this rule is reduced by any and all payments received by the AI/AN provider from outside resources, including Medicare, private insurance or any other coverage. Therefore, AI/AN providers are required to report all payments received on the Managed Care Data Submission Worksheet, including:

(a) Medicaid PHPs;

(b) Medicare Advantage Managed Care Organizations (MCO);

(c) Medicare, including Medicare MCO supplemental payments; and

(d) Any Third Party Resource(s) (TPR).

(7) DMAP will calculate the PHP Supplemental Payment in the aggregate of the difference between total payments received by the AI/AN provider, to include payments as listed in Section (6) of this rule and the payment to which the AI/AN provider would have been eligible to claim as an encounter if they had billed DMAP directly according to the IHS encounter rate.

(8) AI/AN providers must submit their clinic's data using the Managed Care Data Submission Template developed by DMAP to report all PHP encounter and payment activity.

(9) To facilitate DMAP processing PHP supplemental payments, the AI/AN must submit the following:

(a) To PHPs:

(A) Claims within the required timelines outlined in the contract with the PHP and in OAR 410-141-0420, Oregon Health Plan Prepaid Health Plan Billing Payment Under the Oregon Health Plan;

(B) The AI/AN provider number must be used when submitting all claims to the PHPs;

(b) To DMAP:

(A) Report total payments for all services submitted to the PHP:

(i) Including laboratory, radiology, nuclear medicine, and diagnostic ultrasound; and

(ii) Excluding any bonus or incentive payments;

(B) Report total payments for each category listed in the "Amounts Received During the Settlement Period" section of the Managed Care Data Submission Template Coversheet;

(C) Payments are to be reported at the detail line level on the Managed Care Data Submission Template Worksheet, except for capitated payments, or per member per month and risk pool payments received from the PHP;

(D) The total number of actual encounters. An encounter represents all services for a like service element (Medical, Dental, Mental Health, or Alcohol and Chemical Dependency) provided to an individual client on a single date of service. The total number of encounters is not the total number of clients assigned to the IHS or Tribal 638 facility or the total detail lines submitted on the Managed Care Data Submission Template Worksheet;

(E) All individual DMAP performing provider numbers assigned to practitioners associated with the IHS or Tribal 638 facility. "Associated" refers o a practitioner who is either subcontracted or employed by the AI/AN provider. A practitioner associated with an AI/AN provider can only retain their individual performing provider number under one of the two situations:

(i) The practitioner maintains a private practice; or

(ii) The practitioner is also employed by a non-IHS or non-Tribal 638 site.

(F) A current list of all PHP contracts. An updated list of all PHP contracts must be submitted annually to DMAP no later than October 31 of each year.

(10) PHP Supplemental Payment process:

(a) DMAP processes PHP Supplemental Payments on a quarterly basis. The quarterly settlement includes a final reconciliation for the reported time period.

(b) Upon processing a clinic's data and the PHP Supplemental Payment, DMAP will:

(A) Send a check to the AI/AN provider for PHP Supplemental Payment calculated from clinic data DMAP was able to process;

(B) Provide a cover letter and summary of the payment calculation; and

(C) Return data that is incomplete, unmatched, or cannot otherwise be processed by DMAP;

(c) The AI/AN provider is responsible for reviewing the data DMAP was unable to process for accuracy and completeness. The clinic has 30 days, from the date of DMAP's cover letter under Section (9)(b) of this rule, to make any corrections to the data and resubmit to DMAP for processing. Documentation supporting any and all changes must accompany the resubmitted data. A request for extension must be received by DMAP prior to expiration of the 30 days, and must:

(A) Be requested in writing;

(B) Accompanied by a cover letter fully explaining the reason for the late submission; and

(C) Provide an anticipated date for providing DMAP the clinic's resubmitted data and supporting documentation;

(d) Within 30 days of DMAP's receipt of the re-submitted data, DMAP will:

(A) Review the data and issue a check for all encounters DMAP verifies to be valid; and

(B) For quarterly data submissions, send a letter outlining the final quarterly settlement including any other pertinent information to accompany the check;

(e) The AI/AN provider should submit data to DMAP within the timelines provided by DMAP.

(11) Clinics must carefully review in a timely fashion the data that DMAP was unable to process and returns to the AI/AN provider. If clinics do not bring any incomplete, inaccurate or missing data to DMAP's attention within the time frames outlined, DMAP will not process an adjustment.

(12) DMAP encourages AI/AN providers to request PHP Supplemental Payment in a timely manner.

(13) Clinics must exclude from a clinic's data submission for PHP supplemental payment, services provided to a PHP-enrolled non-AI/AN client denied by the PHP because the clinic does not have a contract or agreement with the PHP. This may not apply to family planning services, or HIV/ AIDS prevention services. Family Planning and HIV/AIDS prevention services provided to a PHP-enrolled client when a clinic does not have a contract or agreement with the PHP:

(a) Must be reported in the clinic's data submission for PHP Supplemental Payment if the clinic receives payment from the PHP;

(b) Cannot be reported in the clinic's data submission for PHP Supplemental Payment if the clinic is denied payment by the PHP. If the PHP denies payment to the clinic, the clinic can bill these services directly to DMAP. (See also OAR 410-146-0060).

(14) If a PHP denies payment to a contracted AI/AN provider for all services, items and supplies provided to a client on a single date of service and meeting the definition of an "encounter" as defined in OAR 410-146-0085, for the reason that all services, items and supplies are non-covered by the plan, DMAP is not required to make a supplemental payment to the clinic. The following examples are excluded from the provision of this rule:

(a) Encounters that will later be billed to the PHP as a covered global procedure (e.g. Obstetrics Global Encounter);

(b) Had payment received by Medicare, and any other third party resource not have exceeded the payment the PHP would have made, the PHP would have made payment;

(c) At least one of the detail lines reported for all services, items and supplies provided to a client on a single date of service and represents an "encounter," has a reported payment amount by the PHP.

(15) DMAP will not reimburse some Medicaid-covered services that are only reimbursed by PHPs, and are not reimbursed by DMAP. DMAP will not make PHP supplemental payment for these services, as DMAP does not reimburse these services when billed directly to DMAP.

(16) It is the responsibility of the AI/AN provider to refer PHP-enrolled non-AI/AN clients back to their PHP if the AI/AN provider does not have a contract with the PHP, and the service to be provided is not family planning or HIV/AIDS prevention. The provider assumes full financial risk in serving a person not confirmed by DMAP as eligible on the date(s) of service. See OAR 410-120-1140, Verification of Eligibility. It is the responsibility of the provider to verify:

(a) That the individual receiving medical services is eligible on the date of service for the service provided; and

(b) Whether a client is enrolled with a PHP or receives services on an "open card" or fee-for-service basis.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 24-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: Technical changes and housekeeping of current FQHC and RHC rule.
Adm. Order No.: DMAP 25-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-147-0040, 410-147-0080, 410-147-0125, 410-147-0280, 410-147-0320, 410-147-0340, 410-147-0360, 410-147-0460
Subject: The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP will amend the above listed rules to clarify current policies and procedures for FQHC and RHC providers to ensure Oregon Administrative Rules (OARs) are current and accurate. Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0040
ICD-9-CM Diagnosis and CPT/HCPCs Procedure Codes

(1) The appropriate ICD-9-CM diagnosis code or codes from 001.0 through V99.9 must be used to identify:

(a) Diagnoses;

(b) Symptoms;

(c) Conditions;

(d) Problems;

(e) Complaints; or

(f) Other reasons for the encounter/visit.

(2) The Division of Medical Assistance Program (DMAP) requires diagnosis codes on all claims, including those submitted by independent laboratories and portable radiology, including nuclear medicine and diagnostic ultrasound providers. A clinic must always provide the client's diagnosis to ancillary service providers when prescribing services, equipment, and supplies.

(3) Clinics must list the principal diagnosis in the first position on the claim. Use the principal diagnosis code for the diagnosis, condition, problem, or other reason for an encounter/visit shown in the medical record to be chiefly responsible for the services provided. Clinics may list up to three additional diagnosis codes on the claim for documented conditions that coexist at the time of the encounter/visit and require or affect client care, treatment, or management.

(4) Clinics must list the diagnosis codes using the highest degree of specificity available in the ICD-9-CM. Use a three-digit diagnosis code only if the diagnosis code is not further subdivided. Whenever fourth-digit or fifth-digit subcategories are provided, the provider must report the diagnosis at that specificity. DMAP considers a diagnosis code invalid if it has not been coded to its highest specificity.

(5) DMAP requires providers to use the standardized code sets required by the Health Insurance Portability and Accountability Act (HIPAA) and adopted by the Centers for Medicare and Medicaid Services (CMS). Unless otherwise directed in rule, providers must accurately code claims according to the national standards in effect for calendar years 2007 and 2008 for the date the service(s) was provided:

(a) Use codes on Dental Procedures and Nomenclature as maintained and distributed by the American Dental Association for dental services;

(b) Use the combination of Health Care Common Procedure Coding System (HCPCS) and Current Procedural Terminology (CPT) for physician services and other health care services. These services include, but are not limited to, the following:

(A) Physician services;

(B) Physical and occupational therapy services;

(C) Radiology procedures;

(D) Clinical laboratory tests;

(E) Other medical diagnostic procedures;

(F) Hearing and vision services.

(6) DMAP maintains unique coding and claim submission requirements for Administrative Exams and Death With Dignity services. Refer to OAR 410 Division 150, Administrative Examination and Billing Services, and OAR 410-130-0670, Death with Dignity Services, for specific requirements.

Stat. Auth.: ORS 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 7-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 8-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 19-2001, f. 3-30-01, cert, ef, 4-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0020; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0060; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 10-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

410-147-0080
Prepaid Health Plans (PHPs)

(1) Most Oregon Health Plan (OHP) clients have prepaid health services, contracted for by the Department of Human Services (DHS) through enrollment in a Prepaid Health Plan (PHP). Clinics serving eligible OHP clients who are enrolled in a PHP must secure authorization from the PHP prior to providing PHP-covered services or case management services. Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) must request an authorization or referral from the PHP before providing any services to clients enrolled in a PHP unless the FQHC or RHC have contracted with the PHP to provide PHP-covered services. If an FQHC or RHC has an arrangement or contract with a PHP, the clinic is responsible to follow PHP rules and prior authorization requirements. See OAR 410 Division 141 for OHP Program Rules and; OAR 410-147-0060, Prior Authorization.

(2) The Division of Medical Assistance Programs (DMAP) encourages FQHCs and RHCs to contact each PHP in their local service area for the purpose of requesting inclusion in their panel of providers.

(3) PHPs contracting with FQHCs or RHCs, for the provision of providing services to their members, are required by 42 USC 1396b(m)(2)(A)(ix) to provide payment to the FQHC or RHC that is not less than the level and amount of payment which the PHP would make for services furnished by a non-FQHC/RHC provider.

(4) Payment for services provided to PHP-enrolled clients (PHP members) is a matter between the FQHC or RHC and the PHP authorizing the services except as otherwise provided in OAR 410-141-0410, OHP Primary Care Managers. If a PHP denies payment to an FQHC or RHC because arrangements were not made with the PHP prior to providing the service, DMAP will not reimburse the FQHC or RHC under the encounter rate, except as outlined in Section (5) of this rule (see OAR 410-141-0120, OHP PHP Provision of Health Care Services).

(5) FQHCs and RHCs can provide family planning services or HIV/AIDS prevention services to eligible PHP members without authorization or a referral from the PHP. The FQHC and RHC must bill the PHP first. If the PHP will not reimburse for the service, then the clinic may bill DMAP. Refer to ORS 414.153, Authorization for payment for certain point of contact services.

(6) PHPs will execute agreements with publicly funded providers, unless cause can be demonstrated to DMAP's satisfaction why such an agreement is not feasible for authorization of payment for point of contact services in the following categories (refer to ORS 414.153):

(a) Immunizations;

(b) Sexually transmitted diseases; and

(c) Other communicable diseases.

(7) PHPs are responsible to ensure the provision of qualified sign language and oral interpreter services for covered medical, mental health or dental care visits, for their enrolled PHP Members with a hearing impairment or who are non-English speaking. Services must be sufficient for the FQHC or RHC provider to be able to understand the PHP Member's complaint; to make a diagnosis; respond to the PHP Member's questions and concerns; and to communicate instructions to the PHP Member. See OAR 410-141-0220(7), Oregon Health Plan Prepaid Health Plan Accessibility.

(8) The provider assumes full financial risk in serving a person not confirmed by DMAP as eligible on the date(s) of service. It is the responsibility of the provider to verify a client's eligibility. Refer to OAR 410-120-1140 Verification of Eligibility:

(a) That the individual receiving medical services is eligible on the date of service for the service provided;

(b) Whether an OHP client receives services on a fee-for-service (open card) basis or is enrolled with a PHP; and

(c) Whether the service is covered by a third party resource (TPR), a PHP, or if DMAP reimburses on a fee-for-service basis.

(9) DMAP requires the following of a FQHC or RHC under contract with a PHP:

(a) Clinic must maintain reimbursement and documentation records that will permit calculation of supplemental payments according to OAR 410-147-0460. According to OAR 410-141-0180, Oregon Health Plan Prepaid Health Plan Record Keeping, a PHP's participating providers shall maintain a clinical record keeping system with sufficient detail and clarity to permit internal and external clinical audit to validate encounter submissions and to assure Medically Appropriate services are provided consistent with the documented needs of the PHP Member. See also OAR 410-120-1360, Requirements for Financial, Clinical and Other Records;

(b) Clinics are subject to ongoing performance review by the PHP. According to OAR 410-141-0200, Oregon Health Plan Prepaid Health Plan Quality Improvement (QI) System, PHPs must maintain an effective process for monitoring, evaluating, and improving the access, quality and appropriateness of services provided to DMAP Members. The QI program must include QI projects that are designed to improve the access, quality and utilization of services;

(c) Clinics are subject to program review by DMAP, the Department of Human Services' Audit Unit, and the Department of Justice Medicaid Fraud Unit for the purposes of assuring program integrity and:

(A) Compliance with Oregon Revised Statutes, Oregon Administrative Rules and Federal laws and regulations;

(B) Use of accurate and complete encounter and fee-for-service claims data, and supporting clinical documentation, for calculating PHP supplemental payments and compensation for out-stationed outreach workers;

(C) Adequate records maintenance for cost reimbursed services to thoroughly explain how the amounts reported on the cost statement were determined. The records must be accurate and in sufficient detail to substantiate the data reported.

Stat. Auth.: ORS 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 13-1993, f. & cert. ef. 7-1-93; HR 7-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 42-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0155; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0100; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

410-147-0125
OHP Standard Emergency Dental Benefit

(1) Clients with the Oregon Health Plan (OHP) Standard benefit package have a limited dental benefit. The OHP Standard Emergency Dental benefit is intended to provide services requiring immediate treatment and is not intended to restore teeth. Services are limited to the treatment of conditions listed in Oregon Administrative Rule (OAR) 410-123-1670(2).

(2) Hospital Dentistry is not a covered benefit for the OHP Standard population, except for clients specified in OAR 410-123-1670(3).

(3) Dental services for the OHP standard population are limited to those procedures listed in OAR 410-123-1260, Table 123-1260-1.

(4) An FQHC billing Division of Medical Assistance Programs (DMAP) directly for dental services provided to an open card OHP Standard client, must bill the covered service(s) in accordance with Sections (1) through (3) of this rule, using a dental procedure code as listed in Table 147-0120-1, FQHC/RHC encounter codes.

(5) An FQHC is not limited to the FQHC/RHC encounter procedure codes listed in Table 147-0120-1 when billing a Dental Care Organization (DCO), Medicare, or any other Third Party Resource (TPR).

(6) Any limitations or prior authorization requirements for services listed in OARs 410-123-1160 and 410-123-1260 will also apply to services in the OHP Standard benefit when provided by an FQHC or RHC.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

410-147-0280
Drugs

(1) As defined by the Division of Medical Assistance Programs (DMAP), a valid FQHC or RHC encounter excludes pharmaceutical or biologicals not generally provided during a clinic visit. Refer to OAR 41-147-0120 DMAP Encounter and Recognized Practitioners.

(a) Because DMAP includes the costs of drugs or medication treatments administered by a clinic to treat a client during an office visit in the PPS all-inclusive encounter rate for the office visit, providers cannot bill separately for the costs of the drugs or treatments;

(b) Prescriptions are not included in the PPS encounter rate. To bill for filled prescriptions, the FQHC or RHC's qualified enrolled pharmacy must bill DMAP using its pharmacy provider number.

(2) Clinics may directly bill DMAP using their clinic provider number for contraceptive supplies and contraceptive medications only for:

(a) Clients enrolled in a Prepaid Health Plan (PHP): Clinics must bill the PHP first. If the PHP will not reimburse for the contraceptive supply or contraceptive medication, then the clinic can bill DMAP fee-for-service at the clinic's acquisition cost. See also OAR 410-130-0585, Family Planning Services;

(b) Fee-for-service clients: Clinics can directly bill DMAP fee-for-service at the clinic's acquisition cost for contraceptive supplies and contraceptive medications. See also OAR 410-130-0585, Family Planning Services.

(3) Refer to OAR 410 Division 121, Pharmaceutical Services Program Rulebook for specific information.

Stat. Auth.: ORS 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 8-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 19-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 42-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 39-2002, f. 9-13-02, cert. ef. 9-15-02; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0600; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0240; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

410-147-0320
Federally Qualified Health Center (FQHC)/Rural Health Clinics (RHC) Enrollment

(1) This rule outlines the Division of Medical Assistance Programs (DMAP) enrollment requirements for Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC). Refer also to OAR 410-120-1260 Provider Enrollment.

(a) For outpatient health programs or facilities operated by an American Indian tribe under the Indian Self-Determination Act (Public Law 93-638), providers should refer to the program rules for American Indian/Alaska Native (AI/AN) Services, OAR 410 Division 146, for enrollment details;

(b) An FQHC or RHC that operates a retail pharmacy, provides durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), or provides targeted case management (TCM) services, must enroll separately as a pharmacy, DMEPOS and/or TCM provider. Refer to OAR 410 Division 121, Pharmaceutical; OAR 410 Division 122, DMEPOS; and OAR 410 Division 138, TCM for specific information.

(2) To enroll with DMAP as an FQHC, a health center must comply with one of the following:

(a) Receive Public Health Service (PHS) grant funds under the authority of Section 330;

(b) Have received FQHC Look-Alike designation from the Centers for Medicare and Medicaid Services (CMS), based on the recommendation of the Health Resources and Services Administration (HRSA)/Bureau of Primary Health Care (BPHC); or

(c) Be an Urban Indian Health Program (UIHP) clinic (under Title V of the Indian Health Care Improvement Act, Public Law 94-437). In the Omnibus Reconciliation Act (OBRA) of 1993, Title V programs were added to the list of specific programs automatically eligible for FQHC designation.

(3) Eligible FQHCs who want to enroll with DMAP as an FQHC, and be eligible for payment under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed DMAP Provider Application Form 3117 for an Agency;

(b) Completed Cost Statement(s) (DMAP 3027):

(A) One each for medical, dental and mental health (including addiction, alcohol and chemical dependency). See also OAR 410-147-0360;

(B) One for each FQHC-designated site, unless specifically exempted in writing by DMAP to file a consolidated cost report. See OAR 410-147-0340 regarding multiple provider numbers;

(c) Completed copy of the grant proposal submitted to HRSA/BPHC detailing the clinic's service and geographic scope;

(d) Copy of the HRSA Notice of Grant Award Authorization for Public Health Services Funds under Section 330, or a copy of the letter from CMS designating the facility as a "Look Alike" FQHC;

(e) A copy of the clinic's trial balance. See OAR 410-147-0500, Total Encounters for Cost Reports;

(f) Audited financial statements. Refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations";

(g) Depreciation schedules;

(h) Overhead cost allocation schedule;

(i) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker or psychiatric nurse practitioner is providing mental health services. Refer to OAR 309-012-0130 through 309-012-0220, Certificates of Approval for Mental Health Services; 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; 309-032-0950 through 309-032-1080, Standards for Community Treatment Services for Children; and 309-039-0500 through 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(j) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR 415 Division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(k) A list of all Prepaid Health Plan (PHP) contracts;

(l) A list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the FQHC; and

(m) A list of all clinics affiliated or owned by the FQHC including any clinics that do not have FQHC status along with all DMAP provider numbers assigned to these clinics.

(4) For enrollment with DMAP as an RHC, a clinic must:

(a) Be designated by CMS as an RHC.

(b) Maintain Medicare certification and be in compliance with all Medicare requirements for certification.

(5) Eligible RHCs who want to enroll with DMAP as an RHC, and be eligible for payment under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed DMAP Provider Application Form 3117 for an Agency;

(b) Copy of Medicare's letter certifying the clinic as an RHC;

(c) Medicare Cost Report for RHC or completed Cost Statement(s) (DMAP 3027). See also OAR 410-147-0360. Complete a cost statement for each RHC-designated site, unless specifically exempted in writing by DMAP to file a consolidated cost report. See OAR 410-147-0340 regarding multiple provider numbers:

(A) DMAP will accept an uncertified Medicare Cost Report;

(B) If the clinic's Medicare Cost Report, provided to DMAP, does not include all covered Medicaid costs provided by the clinic, the clinic must submit additional cost information. DMAP will include these costs when determining the PPS encounter rate;

(C) An RHC can submit the Cost Statement (DMAP 3027) as a substitute to the Medicare Cost Report.

(d) A copy of the clinic's trial balance. See OAR 410-147-0500, Total Encounters for Cost Reports (only if completing Cost Statement DMAP 3027);

(e) Audited financial statements. Refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations" (only if completing Cost Statement DMAP 3027);

(f) Depreciation schedules (only if completing Cost Statement DMAP 3027);

(g) Overhead cost allocation schedules (only if completing Cost Statement DMAP 3027);

(h) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker or psychiatric nurse practitioner is providing mental health services. Refer to OAR 309-012-0130 through 309-012-0220, Certificates of Approval for Mental Health Services; 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; 309-032-0950 through 309-032-1080, Standards for Community Treatment Services for Children; and 309-039-0500 through 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(i) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR 415 Division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(j) A list of all Prepaid Health Plan (PHP) contracts;

(k) A list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the RHC; and

(l) A list of all clinics affiliated or owned by the RHC including any clinics that do not have RHC status along with all DMAP provider numbers assigned to these clinics.

(6) The FQHC/RHC Program Manager, upon receipt of the required items as listed in Section (3) of this rule for FQHCs and Section (5) of this rule for RHCs, will review all documents for compliance with program rules, completeness and accuracy.

(7) DMAP prohibits an established, enrolled FQHC or RHC that adds or opens a new clinic site from submitting claims for services rendered at the new site under their FQHC or RHC DMAP provider number, and according to the PPS encounter rate, prior to DMAP's acknowledgment. An FQHC or RHC is required to immediately submit to the attention of the FQHC/RHC Program Manager, DMAP:

(a) For FQHCs only, a copy of the recent HRSA Notice of Grant Award including the new site under the main FQHC's scope;

(b) For RHCs only, a copy of Medicare's letter certifying the new clinic as an RHC;

(c) A recent list of all Prepaid Health Plan (PHP) contracts; and

(d) A recent list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the new FQHC or RHC site.

(8) If an established and enrolled RHC or FQHC changes ownership, the new owner must submit:

(a) Cost Statement (DMAP 3027) or Medicare Cost Report within 30 days from the date of change of ownership to have a new PPS encounter rate calculated; or in writing, a letter advising adoption of the PPS encounter rate calculated under the former ownership. Refer to OAR 410-147-360(13) for more information;

(b) Notice of a change in tax identification number;

(c) A recent list of all Prepaid Health Plan (PHP) contracts;

(d) A recent list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the FQHC or RHC; and

(f) A recent list of all clinics affiliated or owned by the FQHC or RHC including any clinics that do not have FQHC or RHC status along with all DMAP provider numbers assigned to these clinics.

(9) FQHCs that are involved with a Sub-recipient must provide documentation. Sub-recipient contracts with an FQHC must enroll as an FQHC and submit the same required documentation as outlined under the enrollment sections of this rule.

Stat. Auth.: ORS 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 13-1993, f. & cert. ef. 7-1-93; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0010; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

410-147-0340
Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC)/Provider Numbers

(1) Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) are allowed one clinic number only. Multiple sites are not allowed additional clinic provider numbers unless each site has a different tax identification number.

(2) The Division of Medical Assistance Programs (DMAP) may grant exception to section (1) of this rule upon written request. To request an exception, write to DMAP — Attn: FQHC/RHC Program Manager. Include an explanation about why DMAP should grant the FQHC or RHC an exception.

(a) The request needs to include documentation describing in detail the need for multiple provider numbers and outlining the mechanisms in place to assure no duplication of billings.

(b) If DMAP provides multiple clinic numbers and DMAP finds evidence of duplicate billings or failure to use the billing provider number as required, DMAP may terminate the exception for multiple provider numbers upon written notice to the clinic.

(3) If DMAP grants an exception to section (1) of this rule, DMAP will issue the FQHC or RHC a billing provider number for the main administrative site and a separate performing provider number for each clinic site. If the main administrative site also includes a clinic at that same site, that clinic will have two numbers: (1) a billing provider number, and (2) a clinic site provider number.

(4) If an FQHC or RHC has several clinic sites and one or more of the clinics are not designated as an FQHC or RHC, the non-FQHC or non-RHC (each individual clinic) must apply for:

(a) A billing provider number; and

(b) Performing provider number for each practitioner.

(5) Once a clinic enrolls as a FQHC or RHC, DMAP may terminate all individual provider numbers for FQHC/RHC practitioners on the date that the FQHC/RHC clinic number is issued.

(a) To avoid this, the FQHC/RHC must submit a written request for exception that explains why the practitioners need individual provider numbers.

(b) The written request must include documentation that the individual provider either:

(A) Are also employed by a non-FQHC/RHC, or

(B) Have a separate private practice outside of the FQHC or RHC.

(c) To request an exception for individual provider numbers, write to DMAP — Attn: FQHC/RHC Program Manager.

(6) If an FQHC or RHC operates a retail pharmacy or provides durable medical equipment (DME), prosthetics, orthotics, and supplies (DMEPOS), i.e., diabetic supplies, the clinic must apply for a pharmacy provider number and/or apply for a DME provider number. Providers may only use these numbers when billing for either retail pharmacy or DMEPOS services. The clinic must meet all pharmacy or DME enrollment requirements and must use the rules from the appropriate program billing rules. These services are not included in the encounter rate.

(7) DMAP will not issue clinic provider number(s) until after the encounter rate is established.

(8) Upon enrollment and each October thereafter, FQHCs and RHCs must submit to DMAP all provider numbers associated with FQHC/RHC practitioners and/or any non-FQHC and non-RHC clinics numbers.

(9) Prepaid Health Plans (PHPs) are required to report all PHP encounters using the FQHC/RHC clinic number.

Stat. Auth.: ORS 409.050, 409.110, 414.065
Stat. Implemented: ORS 414.065
Hist.: OMAP 63-2002, f. & cert. ef. 10-1-02; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

410-147-0360
Encounter Rate Determination

(1) The Division of Medical Assistance Programs (DMAP) will enroll a clinic as a Federally Qualified Health Center (FQHC) or Rural Health Clinic (RHC) effective the date DMAP determines the clinic's Prospective Payment System (PPS) all-inclusive encounter rate:

(a) An FQHC or RHC can bill using their provider-specific PPS encounter rate for services provided on or after the effective dates of enrollment as an FQHC or RHC with DMAP and determination of the clinic's encounter rate;

(b) Consistent with OAR 410-120-1260, Provider Enrollment, the clinic can submit claims to DMAP for providing specific care, item(s), or service(s) to DMAP clients only when enrolled as a DMAP provider;

(c) For services provided prior to the clinic's enrollment as an FQHC or RHC with DMAP, the clinic or individual practitioner must bill fee-for-service according to applicable DMAP service program's enrollment and billing Oregon Administrative Rules (OARs);

(d) Outpatient health programs or facilities operated by a tribe or tribal organization under the Indian Self-Determination Act were added as entities eligible to participate as an FQHC and receive cost-based reimbursement in the Omnibus Budget Reconciliation Act (OBRA) of 1993.

(2) Effective January 1, 2001, DMAP determines FQHC and RHC encounter rates in compliance with 42 USC 1396a(bb). In general, the PPS encounter rate is calculated by dividing total costs of Medicaid covered services furnished by the FQHC/RHC during fiscal years 1999 and 2000 by the total number of clinic encounters during the two fiscal years.

(3) Clinics existing in 1999 and 2000, and enrolled with DMAP as an FQHC or RHC as of January 1, 2001, receive payment from DMAP for services rendered to Medicaid-eligible OHP clients according to an all-inclusive PPS encounter rate (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the clinic for furnishing such services during fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services, or based on such other tests of reasonableness.

(4) Clinics first qualifying as an FQHC or RHC after fiscal year 2000, will receive payment from DMAP for services rendered to Medicaid-eligible OHP clients according to an all-inclusive PPS encounter rate (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the clinic for furnishing such services during the fiscal year the clinic first qualifies as an FQHC or RHC. Coinciding with enrollment as an FQHC or RHC with DMAP, a clinic will have a PPS encounter rate:

(a) Established by reference to payments to other clinics located in the same or adjacent areas, and of similar caseload; or

(b) In the absence of such clinic, through cost reporting methods based on tests of reasonableness.

(5) Beginning in fiscal year 2002, and for each fiscal year thereafter, each FQHC/RHC is entitled to the PPS encounter rate(s) payment amount to which the clinic was entitled under Section 42 USC 1396a(bb) in the previous fiscal year, increased by the percentage increase in the Medicare Economic Index (MEI).

(6) To determine the PPS encounter rate(s), a FQHC must submit all financial documents listed in OAR 410-147-0320.

(a) Effective October 1, 2004, for FQHCs only, DMAP will calculate three separate PPS encounter rates for clinics newly enrolling as an FQHC with DMAP:

(A) Medical;

(B) Dental; and

(C) Mental Health, to include addiction, alcohol and chemical dependency services.

(b) FQHCs enrolled with DMAP prior to October 1, 2004, with a single PPS medical encounter rate, will have a separate encounter rate calculated if the clinic adds a service category listed in either Section (6)(a)(B) or (C) of this rule. Refer also to Section (14) of this rule.

(7) To determine the PPS encounter rate, a RHC must submit all financial documents listed in OAR 410-147-0320.

(a) If the clinic's Medicare Cost Report, provided to DMAP, does not include all covered Medicaid costs provided by the clinic, the clinic must submit additional cost information. DMAP will include these costs when determining the PPS encounter rate;

(b) DMAP will remove the Medicare productivity screen and any other Medicare payment caps from the RHC's Medicare encounter rate.

(8) FQHCs or RHCs that have an additional clinic site(s) under the main FQHC or RHC designation, must file the required financial documentation for each clinic site unless specifically exempted in writing by DMAP. If exempted from this requirement by DMAP, an FQHC or RHC may file a consolidated cost report. See OAR 410-147-0340 regarding multiple provider numbers.

(9) For established, enrolled clinics with a change of ownership, the new owner can submit:

(a) A Cost Statement (DMAP 3027) or Medicare Cost Report within 30 days from the date of change of ownership for review by DMAP to determine if a new PPS encounter rate will be calculated as otherwise described in this rule; or

(b) In writing, a letter advising adoption of the PPS encounter rate calculated under the former ownership, including notice if there is a change to the clinic's tax identification number;

(c) Failure to submit a cost statement (DMAP 3027) or Medicare Cost Report within 30 days of the change of ownership will forfeit the opportunity for calculation of a PPS encounter rate(s) at a later date. The PPS encounter rate(s) calculated under the former ownership will be reassigned to the new ownership.

(10) FQHCs and RHCs cannot include the following costs in their Cost Statement (DMAP 3027). For RHCs only, if the following costs are included in the Medicare Cost Report, costs will be excluded:

(a) Costs associated with non-FQHC or non-RHC designated sites;

(b) Costs associated with non-covered Medicaid services. DMAP does not allow the inclusion of indirect or direct costs for non-covered Medicaid services in the clinic's cost report/statement as allowed expenses. Refer to OAR 410-120-1200 Excluded Services and Limitations; or

(c) Costs associated with an FQHC or RHC site that does not serve DMAP clients.

(11) An out-of-state FQHC or RHC must only include expenses associated with Medicaid-covered services provided at clinic sites serving DMAP clients when completing the Cost Statement (DMAP 3027).

(12) The Centers for Medicare and Medicaid Services (CMS) defines a change in scope of services as one that affects the type, intensity, duration, and amount of services. Clinics must submit a request for change in scope to DMAP for review.

(13) DMAP may establish a separate PPS encounter rate if a FQHC adds Dental or Mental Health (including addiction, and alcohol and chemical dependency) services. A separate PPS encounter rate will be calculated by DMAP for the added service element if:

(a) Costs associated with the added service element were not included on the original cost statements for the initial PPS encounter rate determination;

(b) The addition of the service element has been approved by the Health Resources and Services Administration (HRSA) and is included in the notice of grant award issued by HRSA;

(c) The FQHC is certified by the Addictions and Mental Health Division (AMH) to provide mental health services (if mental health services are provided by non-licensed providers), or has a letter or licensure of approval by Addictions and Mental Health Division (AMH) former Office of Mental Health and Addictions Services (OMHAS) to provide addiction, and alcohol and chemical dependency services;

(i) Certification by AMH of an FQHC's outpatient mental health program is required if mental health services are provided by non-licensed providers. Refer to OAR 410-147-0320(3)(i) and (5)(h) for certification requirements

(iii) A letter of licensure or approval by AMH is required for FQHCs providing addiction, alcohol and chemical dependency services. Refer to OAR 410-147-0320(3)(j) and (5)(i);

(14) If an FQHC meets the criteria as outlined in Section (13) of this rule for the addition of Dental or Mental Health (including addiction, and alcohol and chemical dependency) services, after the initial encounter rate determination, DMAP will determine the PPS encounter rate for the newly added service element using the date the scope change was approved by HRSA. For example: the clinic submitted 1999 & 2000 cost reports. In 2001 the clinic added a dental clinic. The cost report would be from 2001 (the most appropriate months) with the MEI adjusted for 2002, 2003 and 2004.

(15) When an FQHC shares the same space for multiple services, then DMAP will use square footage to determine the percent of the indirect cost associated with each encounter rate.

(16) A clinic may be exempt from this requirement if an FQHC has minimal utilization for a particular service such as "Look Alike" clinics and is located in an isolated area. Submit an exemption request with appropriate documentation to the DMAP FQHC Program Manager for consideration.

(17) At any time, if DMAP determines that the costs provided by the clinic for calculating the PPS encounter rate(s) were inflated, DMAP may:

(a) Request corrected cost reports and any other financial documents in order to review and adjust the encounter rate(s); and

(b) Impose sanctions as defined in OARs 410-147-0560 and 410-120-1400.

Stat. Auth.: ORS 409.050, 409.110, 414.065
Stat. Implemented: ORS 414.065
Hist.: OMAP 63-2002, f. & cert. ef. 10-1-02; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

410-147-0460
Prepaid Health Plan Supplemental Payments

(1) Effective January 1, 2001, the Division of Medical Assistance Programs (DMAP) is required by 42 USC 1396a(bb), to make supplemental payments to eligible Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) that contract with Prepaid Health Plans (PHP).

(2) The PHP Supplemental Payment represents the difference, if any, between the payment received by the FQHC/RHC from the PHP(s) for treating the PHP enrollee and the payment to which the FQHC/RHC would be entitled if they had billed DMAP directly for these encounters according to the clinic's Medicaid Prospective Payment System (PPS) encounter rate. Refer to OAR 410-147-0360.

(3) In accordance with federal regulations the provider must take all reasonable measures to ensure that in most instances Medicaid will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before submitting claims to the PHP. Refer to OAR 410-120-1140 Verification of Eligibility.

(4) When any other coverage is known to the provider, the provider must bill the other resource(s) prior to billing the PHP. When a provider receives a payment from any source prior to the submission of a claim to the PHP, the amount of the payment must be shown as a credit on the claim in the appropriate field. See also OAR 410-120-1280 Billing and OAR 410-120-1340 Payment.

(5) Supplemental payment by DMAP for encounters submitted by FQHC/RHCs for purposes of this rule is reduced by any and all payments received by the FQHC/RHC from outside resources, including Medicare, private insurance or any other coverage. Therefore, FQHC/RHCs must report all payments received on the Managed Care Data Submission Worksheet, including:

(a) Medicaid PHPs;

(b) Medicare Advantage Managed Care Organizations (MCO);

(c) Medicare, including Medicare MCO supplemental payments; and

(d) Any Third Party Resource(s) (TPR).

(6) DMAP will calculate the PHP Supplemental Payment in the aggregate of the difference between total payments received by the FQHC/RHC, to include payments as listed in Section (5) of this rule and the payment to which the FQHC/RHC would have been eligible to claim as an encounter if they had billed DMAP directly per their PPS encounter rate.

(7) Effective July 1, 2006, FQHC/RHCs must submit their clinic's data beginning with dates of service January 1, 2006, and after, using the Managed Care Data Submission Template developed by DMAP to report all PHP encounter and payment activity.

(8) To facilitate DMAP processing PHP supplemental payments, the FQHC or RHC must submit the following:

(a) To PHPs:

(A) Claims within the required timelines outlined in the contract with the PHP and in OAR 410-141-0420, Oregon Health Plan Prepaid Health Plan Billing Payment Under the Oregon Health Plan;

(B) The FQHC or RHC clinic number must be used when submitting all claims to the PHPs;

(b) To DMAP:

(A) Report total payments for all services submitted to the PHP:

(i) Including laboratory, radiology, nuclear medicine, and diagnostic ultrasound; and

(ii) Excluding any bonus or incentive payments;

(B) Report total payments for each category listed in the "Amounts Received During the Settlement Period" section of the Managed Care Data Submission Template Coversheet;

(C) Payments are to be reported at the detail line level on the Managed Care Data Submission Template Worksheet, except for capitated payments, or per member per month and risk pool payments received from the PHP;

(D) The total number of actual encounters. An encounter represents all services for a like service element (Medical, Dental, Mental Health, or Alcohol and Chemical Dependency) provided to an individual client on a single date of service. The total number of encounters is not the total number of clients assigned to the FQHC or RHC or the total detail lines submitted on the Managed Care Data Submission Template Worksheet;

(E) All individual DMAP performing provider numbers assigned to practitioners associated with the FQHC or RHC. "Associated" refers to a practitioner who is either subcontracted or employed by the FQHC or RHC. Refer to OAR 410-147-0340 Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) /Provider Numbers for more information about individual provider numbers.

(F) A current list of all PHP contracts. An updated list of all PHP contracts must be submitted annually to DMAP no later than October 31 of each year.

(9) PHP Supplemental Payment process:

(a) DMAP will process PHP Supplemental Payments on a quarterly basis:

(A) Quarterly processing of PHP Supplemental Payments includes a final reconciliation for the reported time period;

(B) For an FQHC or RHC approved by DMAP to participate in a pilot project, PHP Supplemental Payments will be processed at the discretion of DMAP in collaboration with health centers;

(b) Upon processing a clinic's data and the PHP Supplemental Payment, DMAP will:

(A) Send a check to the clinic for PHP Supplemental Payment calculated from clinic data DMAP was able to process;

(B) Provide a cover letter and summary of the payment calculation; and

(C) Return data that is incomplete, unmatched, or cannot otherwise be processed by DMAP;

(c) The FQHC or RHC is responsible for reviewing the data DMAP was unable to process for accuracy and completeness. The clinic has 30 days, from the date of DMAP's cover letter under Section (9)(b) of this rule, to make any corrections to the data and resubmit to DMAP for processing. Documentation supporting any and all changes must accompany the resubmitted data. A request for extension must be received by DMAP prior to expiration of the 30 days, and must:

(A) Be requested in writing;

(B) Be accompanied by a cover letter fully explaining the reason for the late submission; and

(C) Provide an anticipated date for providing DMAP the clinic's resubmitted data and supporting documentation;

(d) Within 30 days of DMAP's receipt of the re-submitted data, DMAP will:

(A) Review the data and issue a check for all encounters DMAP verifies to be valid; and

(B) For quarterly data submissions, send a letter outlining the final quarterly settlement including any other pertinent information to accompany the check;

(e) The FQHC or RHC should submit data to DMAP within the timelines provided by DMAP.

(10) Clinics must carefully review in a timely fashion the data that DMAP was unable to process and returns to the FQHC or RHC. If clinics do not bring any incomplete, inaccurate or missing data to DMAP's attention within the time frames outlined, DMAP will not process an adjustment.

(11) DMAP encourages FQHCs and RHCs to request PHP Supplemental Payment in a timely manner.

(12) Clinics must exclude from a clinic's data submission for PHP supplemental payment, clinic services provided to a PHP-enrolled client when the clinic does not have a contract or agreement with the PHP. This may not apply to family planning services, or HIV/ AIDS prevention services. Family Planning and HIV/AIDS prevention services provided to a PHP-enrolled client when a clinic does not have a contract or agreement with the PHP:

(a) Must be reported in the clinic's data submission for PHP Supplemental Payment if the clinic receives payment from the PHP;

(b) Cannot be reported in the clinic's data submission for PHP Supplemental Payment if the clinic is denied payment by the PHP. If the

PHP denies payment to the clinic, the clinic can bill these services directly to DMAP. (See also OAR 410-147-0060).

(13) If a PHP denies payment to an FQHC or RHC for all services, items and supplies provided to a client on a single date of service and meeting the definition of an "encounter" as defined in OAR 410-147-0120, for the reason that all services, items and supplies are non-covered by the plan, DMAP is not required to make a supplemental payment to the clinic. The following examples are excluded from the provision of this rule:

(a) Encounters that will later be billed to the PHP as a covered global procedure (e.g. Obstetrics Global Encounter);

(b) Had payment received by Medicare, and any other third party resource not have exceeded the payment the PHP would have made, the PHP would have made payment;

(c) At least one of the detail lines reported for all services, items and supplies provided to a client on a single date of service and represents an "encounter," has a reported payment amount by the PHP.

(14) If an FQHC or RHC has been denied payment by a PHP because the clinic does not have a contract or agreement with the PHP, DMAP is not required to make a supplemental payment to the clinic. DMAP is only required to make a PHP supplement payment when the FQHC or RHC has a contract with a PHP.

(15) DMAP will not reimburse some Medicaid covered services that are only reimbursed by PHPs, and are not reimbursed by DMAP. DMAP will not make PHP supplemental payment for these services, as DMAP does not reimburse these services when billed directly to DMAP.

(16) It is the responsibility of the FQHC or RHC to refer PHP-enrolled clients back to their PHP if the FQHC or RHC does not have a contract with the PHP, and the service to be provided is not family planning or HIV/AIDS prevention. The provider assumes full financial risk in serving a person not confirmed by DMAP as eligible on the date(s) of service. See OAR 410-120-1140. It is the responsibility of the provider to verify:

(a) That the individual receiving medical services is eligible on the date of service for the service provided; and

(b) Whether a client is enrolled with a PHP or receives services on an "open card" or fee-for-service basis.

Stat. Auth.: ORS 409.050, 409.110, 414.065
Stat. Implemented: ORS 414.065
Hist.: OMAP 63-2002, f. & cert. ef. 10-1-02; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: July 2008 — Clarify policies and procedures/ update CPT codes/Rx Benefit Manager.
Adm. Order No.: DMAP 26-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 410-148-0060, 410-148-0140
Subject: The Home Enteral/Parenteral Nutrition and IV (EPIV) Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP will amend 410-148-0060 and 410-148-0140 to clarify current policies and procedures for providers to ensure Oregon Administrative Rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance.

These amendments also update CPT code changes, minor internal operational changes pertaining to reimbursement, and reflect upcoming changes in the Pharmacy Benefit Manager. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-148-0060
Authorization

(1) The Division of Medical Assistance Programs (DMAP) requires authorization of payment for the following items or services:

(a) All enteral/parenteral or IV infusion pumps. The provider is required to submit documentation with each request proving that other (non-pump) methods of delivery do not meet the client's medical need;

(b) All nursing service visits, except the assessment nursing visit, associated with home enteral/parenteral nutrition or IV services;

(c) All oral nutritional supplements;

(d) All drugs and goods identified as requiring payment authorization in the Pharmaceutical Services administrative rules (Division 121). Contact the DMAP Pharmacy Benefit Manager to determine those items that require prior authorization.

(2) DMAP will approve payment for the above home enteral/parenteral nutrition and/or IV services entities when they are considered to be "medically appropriate."

(3) DMAP requires authorization of payment for those services that require authorization even though the client has other insurance that may cover the service. Authorization of payment is not required for Medicare covered services.

(4) For services requiring authorization, providers must contact the Division of Medical Assistance Programs (DMAP) or the Medically Fragile Children's Unit for authorization within five working days following initiation of services. Authorization will be given based on medical appropriateness, appropriateness of level of care given, cost and/or effectiveness.

(5) How to Obtain Payment Authorization:

(a) The Department of Human Service's (DHS) Medically Fragile Children's Unit are responsible for authorization for services for clients identified as Medically Fragile Children's Unit clients.;

(b) Contact the DMAP Pharmacy Benefit Manager, Prior Authorization help desk to request oral nutrition supplements.;

(c) Contact the DMAP Medical Unit to request all other authorization.

(d) Payment authorization does not guarantee reimbursement.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010
Stats. Implemented: ORS 414.065
Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 26-1984, f. & ef. 6-19-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0090; HR 26-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0220; HR 9-1992, f. & cert. ef. 4-1-92; HR 26-1993, f. & cert. ef. 10-1-93; HR 3-1995, f. & cert. ef. 2-1-95; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0680; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 63-2003, f. 9-5-03, cert. ef. 10-1-03; DMAP 26-2008, f. 6-13-08, cert. ef. 7-1-08

410-148-0140
Billing Information

(1) For medications:

(a) Pharmacies billing electronically bill through the DMAP Pharmacy Benefit Manager, point-of-sale. For more information on Point-of-Sale, contact the DMAP Pharmacy Benefit Manager's Help Desk;

(b) Only those pharmacies and EPIV providers billing manually for medications and home IV drug ingredients that are not billed through Point-of-Sale may use the 5.1 Universal Claim Form;

(c) Providers who bill by paper are required to complete a new 5.1 Universal Claim Form.

(2) For home enteral/parenteral and IV services other than medications:

(a) Providers must use the CMS-1500 form to bill for home enteral/parenteral nutrition and IV services identified with a five-digit HCPCS or CPT. Use the billing instructions found in the Home Enteral/Parenteral Nutrition and IV Services supplemental materials;

(b) See rule 410-148-0160 for billing clients with Medicare coverage.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010
Stats. Implemented: ORS 414.065
Hist.: HR 26-1990, f. 8-31-90, cert. ef. 9-1-90; HR 9-1992, f. & cert. ef. 4-1-92; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0740; OMAP 63-2003, f. 9-5-03, cert. ef. 10-1-03; DMAP 26-2008, f. 6-13-08, cert. ef. 7-1-08

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Rule Caption: CMS regulations about payment to and from certain public entities.
Adm. Order No.: DMAP 27-2008(Temp)
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08 thru 12-28-08
Notice Publication Date:
Rules Adopted: 410-120-0035
Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP temporarily adopted 410-120-0035 immediately rather than using the standard rule filing 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 this rule. In certain situations established as part of a contract or rule, public providers are responsible for providing the local match. OAR 410-120-0035 informs 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. Because CMS has reinterpreted a federal regulation, this temporary rule is needed immediately to comply with CMS requirement.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0035
Public Entity

(1) This rule pertains to Centers for Medicare and Medicaid (CMS) regulations for payments to and from Department of Human Services (DHS) and public entities.

(2) Effective July 1, 2008, unit of government providers responsible by rule or contract for the local match share portion for claims eligible for Federal Financial Participation (FFP) submitted to Medicaid for reimbursement must submit the local match payment prior to DHS claiming the federal share from CMS:

(a) Before the Department makes payment to the provider that submits its claims to DHS, the provider must transfer funds from allowable sources to DHS representing the local match share of the total allowable cost for claimed services;

(b) Upon receipt of provider's transfer of the local match share and the DHS receipt of claims in the Medicaid Management Information System (MMIS) that are reimbursable to the extent of the transferred local match share amount, DHS will claim FFP from CMS and reimburse the provider for the total reimbursable allowable claimed amount for the services;

(c) Transfer of the local match share to DHS means that the provider certifies that for the purposes of 42 CFR 433.51, the funds it transfers to DHS for the local match share are public funds that are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds; and that all sources of funds are allowable under 42 CFR 433 Subpart B.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Hist.: DMAP 27-2008(Temp), f. 6-13-08, cert. ef. 7-1-08 thru 12-28-08

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

Rule Caption: Payment Limitations in Community-Based Care Services.
Adm. Order No.: SPD 7-2008
Filed with Sec. of State: 5-29-2008
Certified to be Effective: 6-1-08
Notice Publication Date: 5-1-2008
Rules Adopted: 411-027-0005
Rules Amended: 411-027-0025, 411-027-0050, 411-027-0075, 411-027-0150
Rules Repealed: 411-027-0200
Rules Ren. & Amend: 411-027-0000 to 411-027-0020
Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently updating OAR chapter 411, division 027, relating to payment limitations in community-based care services, to address housekeeping issues, establish consistency with other SPD rules, reflect current practice of payment reimbursement, and clarify references to SPD's rate schedule.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-027-0005
Definitions

(1) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior as described in OAR 411-015-0006.

(2) "Area Agency on Aging (AAA)" means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or people with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in 410.210 through 410.300.

(3) "Assessment" means the process of evaluating the functional impairment levels for service eligibility including the individual's requirements for assistance or independence in performing activities of daily living, instrumental activities of daily living and determining nursing facility care. The Seniors and People with Disabilities Division requires use of the Client Assessment and Planning System (CA/PS) as the tool used to determine service eligibility and planning.

(4) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living. This definition includes the use of service animals, general household items or furniture to assist the individual.

(5) "Case Manager" means a Department of Human Services or Area Agency on Aging employee, who assesses the service needs of an applicant, determines eligibility and offers service choices to the eligible individual. The Case Manager authorizes and implements the service plan and monitors the services delivered.

(6) "Client Assessment and Planning System (CA/PS)" is a single entry data system used for completing a comprehensive and holistic assessment, surveying the individual's physical, mental and social functioning, and identifying risk factors, individual choices and preferences, and the status of service needs. The CA/PS documents the level of need and calculates the individual's service priority level in accordance with OAR chapter 411, division 015, calculates the service payment rates, and accommodates individual participation in service planning.

(7) "Client Choice" means that the individual has been informed of alternatives to nursing facility services and has been given the choice of institutional services, waivered services or the Independent Choices Program.

(8) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536, that provides hourly contracted in-home services to individuals served by the Department of Human Services or Area Agency on Aging.

(9) "Cost Effective" means being responsible and accountable with Department of Human Services resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of the available services under the Title XIX Home and Community-Based Services Waiver, the utilization of assistive devices, natural supports, architectural modifications and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources for which the Department of Human Services does not pay.

(10) "Department" or "DHS" means the Department of Human Services.

(11) "Exception" means an approval for payment of a service plan granted to a specific individual in their current residence (or in the proposed residence identified in the exception request) that exceeds the CA/PS assessed service payment levels for individuals residing in community-based care facility services or the maximum hours of service as described in OAR 411-030-0070 for individuals residing in their own homes. The approval is based on the service needs of the individual and is contingent upon the service plan meeting the requirements in OAR 411-027-0020, 411-027-0025 and 411-027-0050. The term "exception" is synonymous with "exceptional rate" or "exceptional payment."

(12) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0040, that provides either hourly or live-in services to eligible individuals and is employed by the individual. The term Homecare Worker includes Client-Employed Providers in the Spousal Pay and Oregon Project Independence Programs. It also includes Client-Employed Providers that provide state plan personal care services to seniors and people with physical disabilities. The term does not include Independent Choices Program Providers nor Personal Care Attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(13) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(14) "Independent Choices Program (ICP)" means the In-Home Services Program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services that are provided pursuant to a written service plan.

(15) "In-Home Services" means those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(16) "Live-In Services" means those Client-Employed Provider Program services provided when an individual requires activities of daily living, self-management tasks and twenty-four hour availability. Time spent by any live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements. To ensure continuity of service for the individual, live-in service plans must include at least one Homecare Worker providing twenty-four hour availability for a minimum of five days in a calendar week.

(17) "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates and the community. Services provided by natural supports are resources that are not paid for by the Department of Human Services.

(18) "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.

(19) "SPD" or "Division" means the Seniors and People with Disabilities Division, within the Department of Human Services.

(20) "Twenty-Four Hour Availability" means the availability and responsibility of an employee to meet activities of daily living and self-management needs of an eligible individual as required by that individual over a 24 hour period.

(21) "Waiver Services" means services provided through Oregon's Medicaid Home and Community-Based Services Waiver under the authority of section 1915(c) of the Social Security Act, that allows the state to provide home and community-based care services to eligible individuals as an alternative to nursing facility services.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08

411-027-0020
Payment Limitations in Community-Based Care Services

(1) PAYMENT FOR SERVICES.

(a) SPD service payments under this rule are limited to home and community-based care services provided under Oregon's Title XIX 1915(c) Waiver for Aged and Disabled Persons.

(b) Community-based care services include, but are not limited to:

(A) In-home services (Client-Employed Providers and Contracted In-Home Care Agencies);

(B) Residential Care Facility services;

(C) Assisted Living Facility services;

(D) Adult Foster Home services;

(E) Specialized living services;

(F) Adult day services; and

(G) Home-delivered meals.

(2) PAYMENT BASIS.

(a) Unless otherwise specified, service payment will be based upon each individual's assessed need for services as documented in the SPD CA/PS.

(b) Payments for community-based care services are not intended to replace the resources available to an individual from their natural support system. Payment by SPD may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the individual.

(c) Individuals with excess income must contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620.

(d) Service plans will be based upon less costly means of providing adequate services consistent with client choice.

(e) SPD and AAA local office staff will monitor the progress of the individual. When a change occurs in the individual's service needs that may warrant a change in the service payment rate, staff will update the service plan.

(3) PAYMENT LIMITATIONS.

(a) The total continuing cost of waiver services for an individual in a community-based setting will not exceed the comparable nursing facility rate.

(b) Notwithstanding section (3)(a) of this rule, SPD may authorize service payment rates that exceed the comparable nursing facility rate when:

(A) There is a specific rehabilitation plan approved by SPD, with goals and a definite time frame for delivery, that will improve the individual's self-sufficiency; or

(B) SPD determines that intensive convalescent care is required for a limited period of time; or

(C) SPD determines that intensive long-term care or special technology is required, but is otherwise available locally only in an acute care facility (hospital); and

(D) SPD has reviewed the costs of service to be provided and determined their reasonability.

(c) If service payment is authorized under section (3)(b) of this rule:

(A) The service plan shall reflect specific provider responsibilities, the authorization period for services and the total rate authorized.

(B) SPD and AAA local office staff will provide the service plan authorization to the provider.

(C) SPD and AAA local office staff will monitor the individual's service needs and recommend adjustments to the service plan when appropriate.

(4) SERVICE PAYMENTS. All service payments must be prior authorized by SPD or AAA local office staff.

(a) SPD and AAA Case Managers must authorize service payments from the rate schedule based on the individual's service program and assessed need for services documented in the SPD CA/PS.

(b) Any rate that differs from the rate schedule must be pre-authorized by SPD Central Office.

(5) SPOUSAL SERVICES. SPD will not make direct payments to a spouse for providing community-based care services except for in-home services as provided in OAR chapter 411, division 030.

(6) PAYMENTS FOR ADULT DAY SERVICES.

(a) SPD and AAA local office staff may authorize payments to any Medicaid-Contracted Adult Day Services Program, as described in OAR chapter 411, division 066, in accordance with the rate schedule.

(b) Adult day services may be authorized as part of an overall plan of services for service-eligible individuals and may be used in combination with other community-based care services if day services are the appropriate resource to meet a special need.

(c) Adult day services may be authorized for payment as a single service or in combination with other community-based care services. Adult day services will not be authorized nor paid for if another provider has been authorized payment for the same service. Payments authorized for adult day services will be included in computing the total cost of services.

(d) SPD will pay for a half day of program services when four or less hours of services are provided, and will pay for a full day of program services when more than four, but less than 24 hours are provided.

(7) PAYMENT FOR HOME DELIVERED MEALS.

(a) SPD and AAA local office staff may authorize payments to any Medicaid-Contracted Home Delivered Meals Provider, as described in OAR chapter 411, division 040, in accordance with the rate schedule.

(b) Home-delivered meals may be authorized as part of an overall plan of services for service-eligible individuals and may be used in combination with other community-based care services if meals are the appropriate resource to meet a special need.

(8) PAYMENTS TO ASSISTED LIVING FACILITIES.

(a) SPD and AAA local office staff may authorize payments to any Medicaid-Contracted Assisted Living Facility (ALF) as defined in OAR 411-054-0005.

(b) Monthly Service Payment Determination.

(A) Monthly service payment for SPD individuals is based on degree of impairment in each of the six activities of daily living as determined by the SPD CA/PS and the payment levels described in section (8)(b)(C) of this rule. The initial service plan must be developed prior to admission and must be revised if needed within 30 days. The service plan must be reviewed and updated at least quarterly or more often as needed, as per OAR 411-054-0034.

(B) Activities of daily living are weighted for purposes of determining the monthly service payment as follows:

(i) Critical activities of daily living. Elimination, eating and cognition/behavior.

(ii) Less critical activities of daily living. Mobility, bathing/personal hygiene and dressing/grooming.

(iii) Essential factors. Other essential factors considered are medical problems, structured living, medical management and other needs.

(C) Payment (Impairment) Levels.

(i) Level 1 —All Title XIX, service priority level 1–13 eligible individuals are qualified for Level 1 or greater.

(ii) Level 2 — Individual requires assistance in cognition/behavior AND elimination or mobility or eating.

(iii) Level 3 — Individual requires assistance in four to six activities of daily living OR requires assistance in elimination, eating and cognition/behavior.

(iv) Level 4 — Individual is full assist in one or two activities of daily living OR requires assistance in four to six activities of daily living plus assistance in cognition/behavior.

(v) Level 5 — Individual is full assist in three to six activities of daily living OR full assist in cognition/behavior AND one or two other activities of daily living.

(D) The reimbursement rate for SPD individuals will not be more than the rates charged private paying individuals receiving the same type and quality of services.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1984(Temp), f. & ef. 11-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 10-1985, f. & ef. 8-1-85; SSD 12-1985(Temp), f. & ef. 9-19-85; SSD 16-1985, f. 12-31-85, ef. 1-1-86; SSD 4-1987(Temp), f. & ef. 7-1-87; SSD 13-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 2-1993, f. 3-19-93, cert. ef. 4-1-93; SSD 9-1993, f. & cert. ef. 12-1-93; SDSD 3-1998, f. 2-27-98, cert. ef. 3-1-98; SDSD 1-1999, f. & cert. ef. 3-1-99; SDSD 2-1999, f. 3-1-99, cert. ef. 4-1-99; SDSD 1-2001(Temp) f. & cert. ef. 2-5-01 thru 8-3-01; Suspended by SDSD 5-2001(Temp), f. & cert. ef. 3-8-01 thru 8-3-01; Administrative correction 11-20-01; SDSD 10-2001, f. 12-27-01, cert. ef. 1-1-02; SPD 21-2004(Temp), f. 7-31-04 cert. ef. 8-1-04 thru 1-5-05; SPD 39-2004, f. 12-30-04, cert. ef. 1-5-05; SPD 27-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 5-2007, f. 4-16-07, cert. ef. 4-17-07; Renumbered from 411-027-0000, SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08

411-027-0025
Payment for Residential Care Facility and Adult Foster Home Services

SPD will reimburse for services provided to individuals residing in a Residential Care Facility or an Adult Foster Home according to the following:

(1) SERVICE PAYMENT. The provider shall agree to accept an amount determined pursuant to OAR 461-155-0270 for room and board, and a service payment determined by SPD pursuant to 411-027-0020 or 411-027-0050 as payment in full for all services rendered to an individual.

(2) SERVICE RATES. Service rates are based on the individual's level of impairment and assessed need for services as documented on the SPD CA/PS. Service eligibility levels are assigned based on the degree of assistance an individual requires with activities of daily living and certain procedures that must be performed by the provider.

(a) A base rate will be paid for all individuals in accordance with the rate schedule.

(b) Additional add-on payments will be made for individuals whose assessed needs meet add-on criteria. Add-on payments will be paid in accordance with the rate schedule.

(A) If an individual is eligible for one add-on payment, an add-on payment will be made in addition to the base payment.

(B) If an individual is eligible for two add-on payments, a total of two add-on payments will be made in addition to the base payment.

(C) If an individual is eligible for three add-on payments, a total of three add-on payments will be made in addition to the base payment.

(c) Eligibility for add-on payments is made based on individual needs as documented on the SPD CA/PS. An individual is eligible for an add-on payment if:

(A) The individual is full assist in mobility or eating or elimination;

(B) The individual demonstrates behaviors that pose a risk to the individual or to others and the provider must consistently intervene to supervise or redirect; or

(C) The individual's medical treatments, as selected and documented on the SPD CA/PS, require daily observation and monitoring with oversight by a licensed healthcare professional, no less than quarterly, and the facility has trained staff to provide such service and does provide the service.

(3) PAYMENT RESPONSIBILITIES.

(a) Individuals are entitled to retain a personal allowance plus any income disregards pursuant to OAR 461-160-0620.

(b) Individuals are responsible for payment of the room and board amount pursuant to OAR 461-155-0270.

(c) Individuals shall contribute any income in excess of the personal allowance, income disregards and room and board payments to the provider toward the service payment pursuant to OAR 461-160-0610 and 461-160-0620.

(d) SPD shall issue payment to the provider for the difference between the service payment and the available income of the individual.

(4) The provider may not charge the individual, or a relative or representative of the individual, for items included in the room and board or service payments for any items for which SPD makes payment.

(5) SPD is not responsible for damages to the provider's home, facility or property, or obligations entered into with the individual.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SDSD 3-1998, f. 2-27-98, cert. ef. 3-1-98; SDSD 4-1998, f. 6-25-98, cert. ef. 7-1-98; SDSD 10-2001, f. 12-24-01, cert. ef. 1-1-02, Renumbered from 411-027-0100; SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08

411-027-0050
Exceptions to Payment Limitations in Community-Based Care

(1) Service payment exceptions may only be granted if SPD determines:

(a) The individual has service needs, documented in the service plan, that warrant a service payment exception; and

(b) The provider actually provides the exceptional service.

(2) Service payment exceptions shall be based on the additional hours of services required to meet the individual's service needs. SPD and AAA local office staff will monitor the individual service needs and recommend adjustments to the plan when appropriate.

(3) Service payment exceptions in Adult Foster Homes and Residential Care Facilities may be authorized only for individual service needs that are not paid for by the base rate or any of the three available add-on payments.

(4) Additional hours for Adult Foster Homes and Residential Care Facilities will be paid at the hourly rate in the rate schedule. SPD does not authorize additional payment exceptions for building, utilities, food or regular maintenance.

(5) No service rate exceptions are allowed in Assisted Living Facilities.

(6) Exceptions above the maximum monthly hours of service in OAR 411-030-0070 for in-home services may only be granted when it is determined the placement is the most appropriate for the resident, special services are necessary to meet individual needs and the provider has the capability to meet those needs.

(7) All individual exceptions to the assessed service need determination in Adult Foster Homes, Residential Care Facilities, or in-home settings, and renewals of exceptions, must be pre-authorized by SPD Central Office.

(a) SPD and AAA local office staff shall approve requests for payment exception before they are transmitted to SPD.

(b) Locally approved requests for payment exception must be sent to SPD Central Office. The request must include:

(A) A statement of individual needs that exceed the assessed rate or the maximum monthly hours of services; and

(B) A statement of how the individual's needs will be met and the cost involved in meeting the individual's needs.

(c) SPD Central Office Exceptions Committee will review and approve or deny exception requests and transmit the decision and effective date to SPD and AAA local office staff.

(d) Rate exceptions expire one year from the effective date or on the date determined by the Exceptions Committee.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SDSD 3-1998, f. 2-27-98, cert. ef. 3-1-98; SDSD 4-1998, f. 6-25-98, cert. ef. 7-1-98; SDSD 10-2001, f. 12-27-01, cert. ef. 1-1-02; SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08

411-027-0075
Special Payment Contracts

(1) SPD may authorize three different types of special payment contract arrangements.

(a) Supplemented Program Contract. A supplemented program contract pays a rate in excess of the rate schedule to providers in return for additional services delivered to target populations.

(b) Consistent Revenue Contract. A consistent revenue contract allows a payment rate based on average facility casemix. The contracted rate is in the range allowed by the rate schedule and is based on individual needs.

(c) Specific Needs Setting Contract. A specific needs setting contract pays a rate in excess of the rate schedule to providers who care for a group of individuals all of whose service needs exceed the service needs encompassed in the base payment and all add-ons.

(2) SUPPLEMENTED PROGRAM CONTRACTS.

(a) SPD may authorize a service payment rate not included in the rate schedule for Residential Care Facilities, Assisted Living Facilities and

Adult Foster Homes providing additional services to a targeted population, pursuant to a written contract with SPD. To qualify, the facility must demonstrate to SPD that:

(A) There is a documented need for additional services to the target population.

(B) The administrative and care staff have sufficient program knowledge and skills to achieve program goals and provide the additional services.

(C) The facility provides substantial additional services beyond those covered under the rate schedule.

(D) There is a comprehensive ongoing staff training program targeted to the population's needs.

(E) The facility has made any modifications necessary to provide the additional services.

(F) The Medicaid individuals served in the facility demonstrate increasing need for assistance with activities of daily living and cognitive abilities due to Alzheimer's Disease or other dementia.

(i) "Alzheimer's Disease" means a chronic, progressive disease of unknown cause that attacks brain cells or tissues.

(ii) "Dementia" means a clinical syndrome characterized by a decline in mental function of long duration in an alert individual. Symptoms of dementia include memory loss and the loss or diminution of other cognitive abilities such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself.

(G) The facility has provided the additional service for at least six months prior to the date on which the supplemented program contract will take effect. Additionally, SPD may approve supplemented program contracts to be effective prior to the date on which the facility will have provided the additional service for six months based on:

(i) SPD experience of provider ability to provide the additional service;

(ii) The recommendation of the SPD and AAA local office staff; or

(iii) Unmet community need for the additional services to be offered under the contract.

(H) The facility can identify, at the time of application for the supplemented program contract, the additional costs that the facility will incur to deliver the additional services. The facility shall include, at a minimum, the additional staffing and training costs it will incur as a result of delivery of the additional services.

(b) SPD will evaluate the information submitted by the facility, and may authorize a contracted payment amount.

(c) A contract may be renewed at the appropriate payment rate on an annual basis for a facility that continues to meet the criteria stated in section (1)(a) of this rule.

(A) At the time of the request for renewal, or at any other time SPD requests, the facility shall provide SPD with information on actual costs incurred in delivery of the additional services. Information provided by the facility shall be in the format prescribed by SPD and shall, at a minimum, include the costs of staffing the additional services and of training for direct care staff.

(B) SPD will evaluate the information submitted by the facility, and may re-authorize a contracted payment amount.

(d) The supplemented program contract rate may be increased only if the Legislative Assembly authorizes SPD to do so and appropriates to SPD the funds needed to pay the increase.

(3) CONSISTENT REVENUE CONTRACTS. SPD may authorize a service payment rate not included in the rate schedule for Residential Care Facilities, Assisted Living Facilities and Adult Foster Homes that request a consistent revenue rate pursuant to a written contract with SPD.

(a) In a consistent revenue contract, SPD establishes a uniform service payment rate for all individuals. The uniform service payment rate is equivalent to the average service payment rate that SPD would pay under the rate schedule. In no case will the consistent revenue contract payment exceed the average amount that SPD would have paid to the facility under the rate schedule.

(b) A provider must request a consistent revenue contract in writing. The request must include the suggested payment amount and justify the calculation of that amount by attaching copies of the most recent three full calendar months Provider Individual Summary Form.

(A) If a request for a consistent revenue contract and the required justification are received by SPD on or before the 15th of the month, the consistent revenue contract payment amount will be effective for payment for services rendered on or after the first day of the month immediately following receipt of the request.

(B) If a request for a consistent revenue contract and the required justification are received by SPD after the 15th of the month, the consistent revenue contract payment amount will be effective for payment for services rendered on or after the first day of the second month following receipt of the request.

(c) A consistent revenue contract may be terminated by the facility by providing 30 days written notice to SPD. If a consistent revenue contract is terminated, service payments for individuals will be made in accordance with the rate schedule.

(d) SPD may terminate a consistent revenue contract by providing 30 days written notice to the facility. If a consistent revenue contract is terminated, service payments for individuals will be made in accordance with the rate schedule.

(e) Payment rates under consistent revenue contracts may be adjusted due to changes in facility casemix.

(A) SPD will review facility casemix annually at contract renewal. The determination of average facility casemix will be based on the average service payment level to which SPD would have assigned individuals over the three calendar months that precede the determination.

(B) Notwithstanding section (3)(e)(A) of this rule, in the first year during which a facility is paid under a consistent revenue contract, the facility may request that the consistent revenue contract payment be recalculated after six months. The request must include the recommended payment amount and justification of that amount.

(f) Service payment rate amounts paid under a consistent revenue contract will be increased as a result of legislatively approved increases at the same time and in the same way as are other facilities of the same licensure.

(4) SPECIFIC NEEDS SETTING CONTRACTS.

(a) Specific needs settings are found in Adult Foster Homes, Residential Care Facilities and Assisted Living Facilities. These settings provide community-based care services for individuals whose needs are not met by the rate schedule.

(b) Determination of facility eligibility for a specific needs setting contract is at the discretion of SPD. In making its determination, SPD will consider:

(A) The needs of the individuals being provided care;

(B) The availability of other community long-term care options to meet individual needs; and

(C) The proportion of facility individuals demonstrating the specific needs setting care need and other factors as SPD may determine.

(c) The provider shall submit information to SPD in the form and at the time requested in order to determine the Medicaid rate to be paid.

(d) The total rate for specific needs setting contracts shall be approved by SPD. The approved rate is a single rate paid for all Title XIX individuals with the specific needs setting care need that live in the eligible facility.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SDSD 10-2001, f. 12-27-01, cert. ef. 1-1-02; SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08; SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08

411-027-0150
Repayment of Premium Deposits for Workers' Compensation

Those providers on whose behalf SPD made a Workers' Compensation premium deposit in accordance with OAR 411-027-0010 (suspended 2-8-91 and repealed 5-1-91) shall repay the deposit amount to SPD at such time that the need for the deposit no longer exists. SPD shall consider the need for the deposit no longer exists when certain conditions occur. Such conditions include, but are not limited to:

(1) The provider sells, transfers, or otherwise goes out of business;

(2) The provider enters into bankruptcy;

(3) The provider's Workers' Compensation insurer no longer requires the deposit; or

(4) SPD owes monies to a nursing facility at the time of each annual settlement. Such monies shall be applied against the premium deposit amount until such time the total deposit is recovered.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 5-1991(Temp), f. & cert. ef. 2-8-91; SSD 9-1991, f. & cert. ef. 5-1-91; SDSD 10-2001, f. 12-27-01, cert. ef. 1-1-02, Renumbered from 411-027-0015; SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08; SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08

Department of Oregon State Police,
State Athletic Commission
Chapter 230

Rule Caption: Updates Rules on Rulemaking Notice and Adopts New Model Rules.
Adm. Order No.: SAC 2-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 230-001-0000, 230-001-0005, 230-001-0010
Subject: Updates rulemaking procedure to clarify that only permanent adoption of rules requires prior notice; adopts 2008 version of Attorney General's Model Rules of Procedure; changes name of agency to reflect legislative changes.
Rules Coordinator: Loree Fogleman—(503) 934-0273

230-001-0000
Rules of Procedure and Notice of Proposed Rule

Before permanently adopting, amending, or repealing any rule, except the Attorney General's Model Rules, the State Athletic Commission shall give notice of the intended action:

(1) 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) By mailing a copy of the notice to persons on the State Athletic Commission mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(3) By mailing or furnishing a copy of the notice to:

(a) The Associated Press;

(b) The Oregonian;

(c) Capitol Press Room.

Stat. Auth.: ORS 183.335
Stats. Implemented: ORS 183.335
Hist.: BWC 2-1987(Temp), f. 9-30-87, ef. 10-1-87; BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 2-2008, f. 6-12-08, cert. ef. 7-1-08

230-001-0005
Model Rules of Procedure

The Commission adopts the following Attorney General's Model Rules of Procedure under the Administrative Procedures Act bearing the effective date of January 1, 2008:

(1) OAR chapter 137, division 1;

(2) OAR 137-003-0001 through 137-003-0092; and

(3) OAR chapter 137, division 4.

[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 Boxing and Wrestling Commission.]

Stat. Auth.: ORS 183.431
Stats. Implemented: ORS 183.431
Hist.: BWC 1-1987, f. 9-30-87, ef. 10-1-87; BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 2-2008, f. 6-12-08, cert. ef. 7-1-08

230-001-0010
Filing of Documents

All correspondence relating to the activities of the State Athletic Commission of the Oregon Department of State Police and all documents required to be filed with it shall be directed to: Director, State Athletic Commission, Oregon Department of State Police, 3400 State Street, Suite G750, Salem, Oregon, 97301.

Stat. Auth.: ORS 183.330
Stats. Implemented: ORS 183.330
Hist.: BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; BWC 1-2002(Temp), f. & cert. ef. 2-15-02 thru 8-13-02; BWC 2-2002, f. & cert. ef. 8-15-02; SAC 2-2008, f. 6-12-08, cert. ef. 7-1-08

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Rule Caption: Repealing Rules Related to Closed Circuit Telecast.
Adm. Order No.: SAC 3-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Repealed: 230-050-0000, 230-050-0005
Subject: Repeals rules purporting to govern reporting of closed circuit telecasts of boxing and wrestling events to facilitate collection of a tax on sales to viewers of those events. The legislature repealed the tax and the authority for the report through passage of House Bill 2399 in 2003, and, as a result, the rules must also be repealed.
Rules Coordinator: Loree Fogleman—(503) 934-0273

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Rule Caption: Repealing Rules Related to Wrestling.
Adm. Order No.: SAC 4-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Repealed: 230-130-0000, 230-130-0005, 230-130-0010, 230-130-0020, 230-130-0030, 230-130-0040, 230-130-0050, 230-130-0060, 230-130-0070, 230-130-0080, 230-130-0090, 230-130-0100, 230-130-0110, 230-130-0120, 230-130-0140, 230-130-0150, 230-130-0160, 230-130-0170, 230-130-0180, 230-130-0190, 230-130-0200, 230-130-0220, 230-130-0230
Subject: Repeals rules related ot wrestling in light of legislative repeal of statutes related to wrestling.
Rules Coordinator: Loree Fogleman—(503) 934-0273

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Rule Caption: Permanent Mixed Martial Arts Rules; Amending Definitions, Licensing, and Application Rules for all Commission Sports.
Adm. Order No.: SAC 5-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Adopted: 230-020-0195, 230-020-0215, 230-140-0000, 230-140-0020, 230-140-0030, 230-140-0040
Rules Amended: 230-010-0000, 230-010-0005, 230-020-0010, 230-020-0030, 230-020-0040, 230-020-0060, 230-020-0070, 230-020-0080, 230-020-0090, 230-020-0110, 230-020-0170, 230-020-0190, 230-020-0200, 230-020-0210, 230-020-0240, 230-020-0300, 230-020-0310, 230-020-0320, 230-020-0330, 230-020-0405, 230-020-0410, 230-020-0450, 230-020-0470, 230-020-0480
Rules Repealed: 230-010-0010, 230-010-0016, 230-010-0030, 230-010-0050, 230-020-0005, 230-020-0020, 230-020-0050, 230-020-0220, 230-020-0230, 230-020-0250, 230-020-0440, 230-140-0010(T)
Rules Ren. & Amend: 230-010-0040 to 230-020-0015
Subject: Amends three definitions of the State Athletic Commission's ("Commission") rules to create a division that collects all definitions (division 10); reorganizes all of the licensing and application provisions for all sports into one division (division 20); and adopts permanent rules relating to mixed martial arts events and participants. The rule changes affect promoters, professional boxers, mixed martial arts contestant (amateur and professional), seconds, referees, timekeepers, and all others who are or seek to be licensed by the Commission. The rule changes include new fees for licensing of amateur and professional mixed martial arts contestants and a fee reduction for a state-wide promoter's license.
Rules Coordinator: Loree Fogleman—(503) 934-0273

230-010-0000
Statutory Definitions Apply

Unless otherwise provided in OAR chapter 230, the definitions in ORS 463.015 apply to the provisions of OAR chapter 230.

Stat. Auth.: ORS 463.413
Stats. Implemented: ORS 463.413
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-2002(Temp), f. & cert. ef. 2-15-02 thru 8-13-02; BWC 2-2002, f. & cert. ef. 8-15-02; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-010-0005
Other Definitions

The following definitions also apply to OAR chapter 230, unless otherwise provided:

(1) "Amateur" means a contestant or participant in boxing or mixed martial arts who is not a professional.

(2) "Commission" means the Oregon State Athletic Commission.

(3) "Department" means the Oregon Department of State Police.

(4) "Director" or "Executive Director" means the Executive Director of the Oregon State Athletic Commission, referred to as the "administrator" in ORS 463.125.

(5) "Professional" means a boxer or mixed martial arts contestant who competes for or who has competed for a money prize, purse, or any other compensation in a boxing, mixed martial arts, or other unarmed combat event, whether licensed at the time or not. A boxer or mixed martial arts contestant who is or has been licensed in another jurisdiction as a professional boxer or professional mixed martial arts contestant is a professional.

(6) "Superintendent" means the Superintendent of the Oregon Department of State Police.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.113 & 463.015
Hist.: BWC 1-1996, f. & cert. ef. 4-8-96; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0010
Temporary Permit

(1) Pending investigation of the qualifications or fitness of an applicant for licensure, the Director, may grant such applicant, except an applicant for a license as a promoter, a temporary permit to act in the capacity for which a license is required. The granting of a temporary permit shall, however, carry no presumption of the qualification or fitness of such applicant for licensure, and the same may at any time be summarily terminated in the event the application for a license is denied by the Superintendent. No such temporary permit shall be issued to any boxer, wrestler, or referee whose application is not accompanied by satisfactory physical and eye examination reports from duly licensed physicians.

(2) A temporary permit shall be valid for no more than 30 days from date of issue.

(3) A holder of a temporary permit shall keep the permit in the holder's possession and shall present said permit upon request to a promoter and to any representative of the Commission.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0015
Change of Address

Every person, corporation, association or other organization holding a license issued by the Superintendent or the Commission or applying for such a license shall, during the term of the license or pendency of the application, immediately notify the Director in writing of a change in the applicant's address, giving both the old and the new address.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.113, ORS 463.025, ORS 463.035
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; Renumbered from 230-010-0040, SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0030
Application for License; Contents, Falsification

(1) Applications for licenses shall be in writing on a form supplied by the Superintendent.

(2) Falsification or omission in whole or in part of a material fact or representation on any application for a license shall result in the application being denied, and if the application has been previously granted, the license shall be revoked unless otherwise ordered by the Superintendent.

(3) Applicants may be required to submit two classifiable sets of fingerprints.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025, 463.035 & 463.113
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0040
Standards for Issuance of Licenses

(1) Notwithstanding any other provision, if in the judgment of the Superintendent the financial responsibility, experience, character or general fitness of an applicant for a license or renewal thereof, or of any person connected with the applicant, are such that the participation of the applicant will be inconsistent with the public interest, or with the best interests of boxing, mixed martial arts, or wrestling, the Superintendent may deny an application for a license, deny an application for renewal of a license, or issue a limited license subject to specified terms and conditions.

(2) In assessing the financial responsibility of an applicant, the Superintendent will pay particular note to the applicant's credit history in regard to promotion and participation in boxing and wrestling activities in this and other jurisdictions. The Director may require periodic training seminars for referees, judges, trainers, ringside physicians and any other person licensed by the Superintendent and the Director shall require attendance at such seminar(s) as a prerequisite to the issuance or renewal of any license issued by the Superintendent.

(3) If the athletic commission or other similar regulatory body of another state has suspended or revoked the license of any licensee or any applicant for a license, the Superintendent may suspend, revoke or deny a license based upon the action of the other body.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025, 463.035 & 463.113
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0060
Promoter's License — Boxing

(1) A promoter may not act as and cannot be licensed as a manager, second, mixed martial arts competitor, or boxer. If an applicant for a promoter's license already holds a license as a manager, second, mixed martial arts competitor, or boxer, and fails to surrender such license as an incident to application for licensure as a promoter, the Superintendent will deny such application. To qualify for licensure as a promoter, an applicant must:

(a) Meet the qualifications for licensure as a matchmaker, or show evidence that the applicant employs a licensed matchmaker;

(b) Demonstrate a history of credit worthiness, particularly in regard to the promotion of past events in Oregon or other jurisdictions;

(c) Demonstrate that the venues that the applicant proposes to use comply with fire and safety regulations and that the dressing rooms and other facilities meet the requirements of the Superintendent;

(d) Provide either:

(A) a promotional plan under which the applicant exercises complete and exclusive control over the sale and counting of tickets, and exclusive supervision over box office employees, ticket takers and security personnel; or

(B) As an alternative to this promotional plan, an applicant may submit A proposed agreement for the Director's approval an agreement between the applicant and the a facility in question which relates to that provides for the sale and accounting for tickets and revenues, and preparation of required reports, and supervision of box office employees, ticket takers, ushers and security personnel. Any such proposed agreement is subject to approval by the Director to ensure that it adequately addresses the required topics and that the interest of the participants and the public are adequately protected.

Stat. Auth.: ORS 463.113 & 463.115
Stats. Implemented: ORS 463.035 & 463.165
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 2-1988(Temp), f. & cert. ef. 6-2-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1993(Temp), f. & cert. ef. 9-13-93; BWC 1-1993(Temp), f. & cert. ef. 9-13-93; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0070
Fingerprints and Photographs

(1) An applicant for a promoter's license shall submit two classifiable sets of fingerprints at the time the applicant files the initial application. The applicant shall also furnish two passport-sized photographs.

(2) This rule applies to any individual applying for a promoter's license or any shareholder, officer or director signing an application for a promoter's license in the name of a club, corporation, association, or other organization.

Stat. Auth.: ORS 463.113 & 463.165
Stats. Implemented: ORS 463.035, 463.165 & 463.200
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0080
Changes in Proprietary Interest

(1) All partnerships or corporations licensed as promoters shall submit in writing for prior approval by the Director, any proposed change in the persons connected with or having proprietary interest in the promoter, including any change in the shareholders of a corporate entity. Any sole proprietor licensed as a promoter who forms an intention to operate as a partnership shall resubmit an application for a promoter's license prior to engaging in promotional activity as a partnership.

(2) The Superintendent may deny a promoter's application or suspend or revoke any promoter's license if the Superintendent finds that at any time the licensee or any partner, corporate officer, corporate director, shareholder, or employee of any promoter, in this state or elsewhere:

(a) Has engaged in illegal bookmaking or other illegal activity;

(b) Has been convicted of a crime that involves the sport of boxing, mixed martial arts, or wrestling in any way;

(c) Has been the subject of discipline by the boxing, mixed martial arts, or wrestling regulatory authority in any other state;

(d) Is engaged in any other activities or practices that are detrimental to the best interests or boxing, mixed martial arts, or wrestling.

Stat. Auth.: ORS 463.113 & 463.165
Stats. Implemented: ORS 463.035 & 463.165
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0090
Basis for Granting License

The Superintendent shall not issue any promoter's license to an applicant unless the Superintendent is satisfied that the applicants is the real party in interest, and intends to arrange, conduct, hold, or give such contests itself, himself, or herself.

Stat. Auth.: ORS 463.113 & 463.165
Stats. Implemented: ORS 463.165
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; BWC 1-1996, f. & cert. ef. 4-8-96; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0110
Appearance Before the Director

Any person applying for a promoter's license or renewal thereof, must appear in person at the office of the Director. The Director shall review and investigate all applications. The Director shall file a signed written recommendation for grant or denial of the application for a license or renewal of a license, along with a report of such investigation of the applicant with the Superintendent.

Stat. Auth.: ORS 463.113 & 463.165
Stats. Implemented: ORS 463.035 & 463.165
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0170
Matchmaker's License

(1) Any person who is not licensed as a promoter and who arranges matches for a boxing or mixed martial arts contest or event in Oregon, whether or not such arrangements are made in Oregon, must be licensed as a matchmaker.

(2) No matchmaker shall hold a manager's or second's license or manage a boxer or mixed martial arts contestant, either directly or indirectly.

(3) To qualify for a matchmaker's license, an applicant must pass a written examination administered by the commission on Oregon law and regulations relating to boxing and mixed martial arts. The examination may be waived if the applicant possesses a current and valid license as a matchmaker in another state or country and has not been subject to any disciplinary action.

Stat. Auth.: ORS 463.113 & 463.165
Stats. Implemented: ORS 463.025 & 463.165
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0190
Boxer's License

(1) A professional boxer who boxes in Oregon must be licensed in Oregon; an amateur boxer who boxes in Oregon need not be licensed in Oregon.

(2) Anyone who applies for a boxer's license and who cannot provide evidence of recent or previous significant professional or amateur boxing experience must show proof of proper training and must demonstrate physical competence. Physical competence may include but is not limited to competence in the elements of offense, defense, clean hitting, ring generalship, and physical ability to box at least four rounds. A boxer without prior ring experience may be required to demonstrate competency at a sparring session and be evaluated at that time by the Director or a representative of the Director.

Stat. Auth.: ORS 463.113 & 463.115
Stats. Implemented: ORS 463.113 & 463.115
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0195
Mixed Martial Arts Competitor's License

(1) Professional and amateur mixed martial arts competitors who compete in Oregon must be licensed.

(2) In addition to any other requirements for licensure, an application for a license as a mixed martial arts competitor must include a recent photograph of the applicant showing the applicant's full face.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.015, ORS 463.025 & ORS 463.165
Hist.: SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0200
Manager's and Timekeeper's License

(1)(a) Manager's License. All applications for a manager's license shall contain a listing of all boxers and mixed martial arts participants whom the applicant proposes to manage and a list of all persons connected with, or having a proprietary interest in, the management of each boxer or mixed martial arts combatant.

(b) An application for a manager's license shall be signed by the sole proprietor, a general partner, or an officer of the corporation or association, as the case may be.

(c) An applicant may be required to pass a written examination administered by the Superintendent on the fundamentals of boxing or mixed martial arts, or both, and Oregon law and regulations relating to boxing or mixed martial arts or both. The examination may be waived if the applicant possesses a current and valid license as a manager in another state or country and has not been subject to any disciplinary action.

(2) Timekeeper's License. In order to be issued a timekeeper's license, an All applicants for a timekeeper's license must may be required to meet all of the following requirements:

(a) Pass a written examination administered by the Director on the Oregon laws and regulations relating to boxing and mixed martial arts;

(b) Perform a demonstration of competency by demonstrating the duties of a timekeeper before a representative of the Director;

(c) The examination and demonstration of competency may be waived if the applicant for a timekeeper's license possesses a current and valid license as a timekeeper in another state or country and has not been subject to any disciplinary action.

Stat. Auth.: ORS 463.113 & 463.165
Stats. Implemented: ORS 463.165 & 463.025
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; BWC 1-1996, f. & cert. ef. 4-8-96; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0210
Second's License

(1) Only approved ringside physicians, approved medical personnel, or a person licensed as a second may administer to cuts and apply medications approved by these rules.

(2) An applicant for a license as a second must pass a written examination administered by the Superintendent on the fundamentals of boxing or mixed martial arts and Oregon laws and regulations relating to boxing or mixed martial arts and, upon the request of the Director, demonstrate the duties of a second before a representative of the Commission.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.165
Hist.: BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0215
Approval as Ringside Physician or Medical Personnel

(1) The State Athletic Commission Medical Advisory Committee shall nominate a medical doctor or osteopath for approval by the Commission to serve as a ringside physician if the Committee determines that:

(a) The medical doctor or osteopath is licensed in the State of Oregon; and

(b) The medical doctor or osteopath is familiar with the physical standards for licensing boxers and mixed martial arts contestants.

(2) The Director may approve participation as medical personnel, other than as a ringside physician, of any person who is:

(a) Licensed in Oregon as a medical doctor, osteopath, emergency medical technician, physician's assistant, nurse practitioner, or registered nurse; and

(b) Who is familiar with the physical standards for licensing boxers and mixed martial arts contestants.

Stat. Auth. ORS 463.113 & ORS 463.165
Stats. Implemented: ORS 463.037 & ORS 463.149
Hist.: SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0240
Annual License Fees

Application for a license shall be accompanied by an annual license fee as follows:

(1) Professional Boxer — Fifteen dollars — $15;

(2) Mixed Martial Arts Competitor

(a) Professional — Fifteen dollars — $15;

(b) Amateur — Ten dollars — $10;

(3) Manager — Forty dollars — $40;

(4) Matchmaker — Forty dollars — $40;
(5) Judge — Twenty-five dollars — $25;
(6) Referee — Twenty-five dollars — $25;
(7) Second — Fifteen dollars — $15.
(8) Promoter:
(a) One designated city, valid only within the incorporated limits of the city for which it is granted — $100;
(b) Entire state — $500;
(9) Timekeeper — Ten dollars — $10.
Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.035
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0080; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0300
Medical Requirements for Licensure

Medical Examination of Boxer, Mixed Martial Arts Competitor and Referee Applicants.

(1) Any applicant for a license as a boxer or professional mixed martial arts contestant or as a referee, who resides in this state at the time of application shall be examined by a physician approved by the commission pursuant to 230-020-0215.

(2) Physicals must be accompanied by the witnessed collection of lab specimens accomplished at the time of the examination. Results of the examination, with reports of the laboratory analysis of the specimens attached to the examination form, must be submitted directly to the Commission on a form provided by the Commission.

(3) An applicant for a license as a boxer, professional mixed martial arts competitor, or referee who does not reside in Oregon at the time of application may submit proof of medical qualification if the examination is performed by a physician authorized to perform such examinations by the state or nation in which the examination is conducted and if it is conducted in accordance with Commission's instructions including the use of applicable forms provided by the Commission.

(4) Annual renewal examination. Any boxer's, professional mixed martial arts competitor's, or referee's renewal application must be accompanied by a report of an updated medical exam. The examining physician may require laboratory testing at the applicant's expense, if in the judgment of the physician the applicant's win/loss record, number of TKOs, age, or other history warrants the testing. The results of the medical examination, including the results of laboratory tests, should be submitted at least 14 days prior to renewal date. Any delay in submitting the report of the results of the medical examination or the laboratory tests may delay a decision on the renewal of the license.

(5) Boxer, mixed martial arts competitor, or referee applicants for initial or renewal licensing must also submit evidence that the applicant has, within the previous 30 days, been administered an HIV test for the presence of AIDS antibodies and that the results of such test were negative.

(6) Boxer, mixed martial arts competitor, or referee applicants for initial or renewal licensing must also submit evidence that the applicant has, within the previous 30 days, been tested for Hepatitis B and Hepatitis C and that the results of such tests were negative.

(7) An applicant for renewal of a license as a boxer or mixed martial arts competitor and the applicant's manager are jointly responsible for submitting the report of the results of the medical examination and laboratory testing, including HIV test.

(8) An application for a license or for renewal of a license as a boxer, mixed martial arts contestant, or referee will be denied if the applicant's medical examination indicates the presence of prohibited substances, as described in OAR 230-020-0450. The Superintendent will not consider a reapplication for a period of 30 days from the date of denial. If, after reapplication, a second test reveals the presence of prohibited substance, the Superintendent will not consider a reapplication for a period of 180 days from the date of the first license denial under this section.
Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.113
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Section (4) renumbered from 230-060-0120(3) & section (5) renumbered from 230-060-0120(4); BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0310
Vision Requirements — Boxer

(1) Eye Examination. All applicants for a boxer's license, or renewal thereof, must submit a report of a complete medical eye examination by an ophthalmologist or optometrist on a form provided by the Director.

(2) The Superintendent shall deny, suspend or revoke a license as a boxer if the Commission determines that the applicant or licensee cannot safely engage in boxing because of a visual condition, including but not limited to one of the following:

(a) Uncorrected visual acuity of less than 20/100 in either eye;

(b) Corrected visual acuity of less than 20/60 in either eye (amblyopia), regardless of its cause;

(c) A visual field of 30 degrees or less, extending over one or more quadrants of the visual field;

(d) A cataract in either eye which reduces corrected or uncorrected vision to 20/40 or less;

(e) Presence of untreated or unrepaired retinal detachment or retinal tear (excluding choroidal tear);

(f) Presence of primary glaucoma, whether or not such condition has been treated;

(g) Presence of aphasia or dislocated lens in either eye;

(h) Any other visual condition which the physician member determines would prevent the applicant or licensee from safely engaging in boxing.
Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.113
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0130; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; BWC 1-1998(Temp), f. & cert. ef. 8-27-98 thru 12-31-98; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0320
Minimum Physical Requirements for Issuance of Boxer, Professional Mixed Martial Arts Competitor and Referee Licenses

Applicants for licensure as a boxer, professional mixed martial arts competitor, or referee must meet the following physical requirements:

(1) Blood pressure no higher than 150/90. May be under control by the use of diazide diuretic or low salt program.

(2) Temperature below 100 degrees F. or 37 degrees C.

(3) Distant vision 20/100 either eye; near vision of 20/40 by near vision chart. Permanent medical suspension if either eye is below these standards.

(4) Abdomen — No visceralmegaly.

(5) No hernias containing abdominal contents on coughing or straining.

(6) Normal Rhomberg and finger-to-nose tests.

(7) No suppurative lesions on skin.

(8) No indications of active renal disease or loss of one kidney.

(9) No perforated ear drum.

(10) No change in gait or mental status.

(11) No electroencephalographic or CAT scan changes or abnormalities.

(12) No body deformity that would tend to promote injury.

(13) No history of epilepsy or seizure disorder.

(14) No active venereal disease.

(15) No alcohol or drug addiction or evidence of drug usage.

(16) No mononucleosis.

(17) No hepatitis.

(18) No AIDS or AIDS-related complex.

(19) No diabetes unless under control.
Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025, 463.113 & 463.165
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0140; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0330
Medical Disqualification

(1) The Superintendent must refuse to certify a boxer or mixed martial arts contestant if the examining physician or the Superintendent determines that withholding certification is necessary to preserve the health or safety of the boxer or mixed martial arts combatant.

(2) A boxer or mixed martial arts contestant is medically disqualified from competition if he or she:

(a) Has sustained a significant cut that is not completely healed;

(b) Has lost four consecutive fights;

(c) Has sustained three consecutive knockouts or TKOs, any knockout within the past 60 days, or any TKO within the past 30 days;

(d) Has sustained two knockouts within 90 days or a knockout in the first fight after a disqualification;

(e) Is not sufficiently conditioned to participate safely.

(3) A boxer or mixed martial arts contestant who has sustained three knockouts may be referred for neurological consultation.
Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.047

Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Section (2) renumbered from 230-060-0150(2); BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0405
Out-of-State Contests

Any boxer or mixed martial arts contestant licensed by the Superintendent who participates in a boxing or mixed martial arts events outside the State of Oregon may be required, upon returning to Oregon, to again take a medical examination before being allowed to box in Oregon. The results of such out-of-state events shall be reported to the Director by the licensee within 72 hours of returning to Oregon.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.113
Hist.: BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0410
Time Between Bouts

(1) Unless prior written approval is obtained from the Director, a boxer who has competed anywhere must observe a rest period between bouts as specified in this rule before boxing in this state:

(a) Participation in a bout of one or two rounds, rest period of at least seven days;

(b) Participation in a bout of three to six rounds, rest period of at least 14 days;

(c) Participation in a bout of seven to nine rounds, rest period of at least 21 days;

(d) Participation in a bout of ten or more rounds, rest period of at least 30 days.

(2) Unless prior written approval is obtained from the Director, a mixed martial arts competitor who has competed anywhere must observe a rest period of at least seven days before competing in this state.

(3) The ringside physician, notwithstanding the mandatory rest periods prescribed in this rule, may recommend a longer rest period if, in the medical opinion of the ringside physician, a contestant has fought a hard contest and a longer rest period is necessary. The ringside physician must make a recommendation under this section in writing and file it with the Director.

(4) If a boxer or mixed martial arts competitor exhibits any neurological symptoms as a result of a blow during any contest, the ringside physician may order neurological testing and consultation before that boxer or mixed martial arts competitor is allowed to spar or compete in any further contest.

(5) If a boxer or mixed martial arts competitor disagrees with any medical disqualification, the boxer or the mixed martial arts competitor or his or her manager may request a hearing to show proof of fitness. The hearing request must be in writing and must be received by the Commission within 30 days of the medical disqualification. Said hearing shall be provided within 30 days after the Director receives a written request.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025, 463.047 & 463.113
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0170; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0450
Administration or Use of Drugs

(1) The administration or use, by injection or otherwise, of any of the prohibited substances specified in subsection (4) of this rule or stimulants of any type to or by any boxer, mixed martial arts competitor, or referee is prohibited. The Director or other Commission representative may order a test for the presence of such prohibited substances immediately prior to or after a boxing or mixed martial arts match. If the test results indicate the presence of any prohibited substances, the Superintendent may revoke or suspend the license or impose a civil penalty, or both.

(2) At any other time, if the Director or other Commission representative has reasonable cause to believe that a boxer, mixed martial arts competitor, or referee has used or is under the influence of a prohibited substance, the Director may require the boxer, mixed martial arts competitor, or referee to submit to a test for the presence of prohibited substances. If prohibited substances are found to be present, the Superintendent may revoke or suspend the license or impose a civil penalty, or both.

(3) Refusal to submit to any test for prohibited substances at the time such test is ordered shall be grounds for immediate suspension of the boxer's, mixed martial arts contestant's, or referee's license. Such license shall not be reinstated for a period of at least 180 days and only then, upon submission to the Director of test results showing an absence of prohibited substances.

(4) "Prohibited substances" include but are not limited to any "controlled substance" as defined in ORS 475.005(6), alcohol, or any performance enhancing substance.

(5) All tests for prohibited substances ordered or required by the Commission or its representative shall be at the expense of the boxer, mixed martial arts competitor, or referee.

(6) All licenses granted or reinstated under circumstances where test results at one time indicated the presence of prohibited substances may contain conditions calling for further testing on a scheduled or random basis as ordered by the Director.

(7) If the winner of a boxing or mixed martial arts competition is found to have used a prohibited substance, the competition shall be declared "no contest."

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025, 463.113 & 463.165
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0360; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0470
Report of Injury

(1) All ringside physicians shall report, on their post-fight report, all cases where boxers or mixed martial arts contestants have been injured during a bout, or have applied for medical aid after a contest.

(2) A boxer or mixed martial arts contestant who has suffered a knockout or any other serious injury, whether or not arising from boxing or from mixed martial arts, and who has been treated for such injury by a physician or has been hospitalized, shall promptly submit to the Commission a full report from such physician. The manager of the injured or hospitalized boxer or mixed martial arts contestant must ensure that the physician submits a full report to the Commission.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.113
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0440; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-020-0480
Suspension for Disability

(1) Any licensee rejected by an examining physician shall be suspended until it is shown that the licensee is fit for further competition or officiating.

(2) Any boxer or mixed martial arts contestant suspended for 30 days for medical protection or for a hard contest, shall take the same examination as required for the annual physical examination except as directed by the Commission. The Commission may require any other diagnostic procedures that it deems to be in the best interest of the licensee and necessary to determine the licensees ability to resume boxing or mixed martial arts.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025, 463.047 & 463.113
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0450; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-140-0000
Mixed Martial Arts

(1) All mixed martial arts events held in the State of Oregon must be conducted in accordance with ORS Chapter 463 and the applicable rules set forth in OAR chapter 230.

(2) The provisions of this section do not apply to events held on land controlled by an Oregon Indian Tribe unless governed by an intergovernmental agreement between the Oregon State Athletic Commission and an Oregon Indian Tribe.

(3) Except as otherwise provided in OAR chapter 230, the Oregon State Athletic Commission shall apply the generally accepted Mixed Martial Arts Unified Rules of Conduct as adopted by the New Jersey Athletic Commission on March 18, 2003.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025, 463.035 & 463.500
Hist.: SAC 1-2008(Temp), f. & cert. ef. 1-29-08 thru 6-30-08; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-140-0020
Mixed Martial Arts — Promoter Requirements

(1) **Insurance for Professional Contestants**. The promoter of a professional Mixed Martial Arts event shall provide primary insurance coverage for each professional mixed martial arts contestant to provide medical,

surgical and hospital care for contestants who are injured while engaged in a contest or exhibition.

(a) The insurance shall provide a minimum of $20,000 for medical treatment of injuries sustained by the contestant while participating in a mixed martial arts event and a $50,000 minimum death benefit payable to the estate of any competitor should death occur from injuries received while participating in a mixed martial arts contest or exhibition.

(b) The contestant may not be required to pay a deductible for the medical, surgical or hospital care for injuries the contestant sustains while engaged in a contest or exhibition.

(c) If a contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or the contestant's beneficiaries as reimbursement for the payment.

(2) **Insurance for Amateur Contestant**. The promoter of an amateur Mixed Martial Arts event shall provide primary insurance coverage for each amateur mixed martial arts contestant to provide medical, surgical and hospital care for contestants who are injured while engaged in a contest or exhibition.

(a) The insurance program shall provide a minimum limit of $10,000 for medical treatment of injuries sustained by the contestant while participating in a mixed martial arts contest or exhibition.

(b) The contestant may not be required to pay a deductible for the medical, surgical or hospital care for injuries the contestant sustains while engaged in a contest or exhibition.

(c) If a contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or the contestant's beneficiaries as reimbursement for the payment.

(3) **Medical Personnel**.

(a) An approved Ringside Physician shall be assigned by the Commission to each professional Mixed Martial Arts event.

The promoter must pay compensation due to the ringside physician or physicians appointed by the Director.

(b) The Promoter shall provide approved medical personnel at amateur Mixed Martial Arts events. The promoter must pay the compensation due to approved medical personnel.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.035 & 463.113
Hist.: SAC 1-2008(Temp), f. & cert. ef. 1-29-08 thru 6-30-08; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-140-0030
Contestant and Second Requirements

(1) **Weigh-In**. Mixed martial arts contestants shall undergo a pre-fight physical examination and shall be officially weighed within 24 hours of the commencement of the event, at a time and place designated by the Executive Director, in the presence of a representative of the Superintendent.

(a) Scales approved by the Executive Director shall be utilized for the official weigh-in.

(b) No mixed martial arts contestant shall be weighed-in or be administered a pre-fight physical examination unless the mixed martial arts contestant is properly licensed by the Superintendent.

(c) Any mixed martial arts contestant who has been signed to a contract to compete at any mixed martial arts event may be ordered by the Executive Director to appear at any time to be weighed by a representative of the Executive Director.

(d) If a mixed martial arts contestant is late to the weigh-in or physical exam, disciplinary action may result to both the mixed martial arts contestant and the contestant's manager.

(e) The promoter shall provide the Commission physician or medical personnel with a suitable room in which to conduct a pre-fight examinations.

(f) If a mixed martial arts contestant appears at the weigh-in, and the mixed martial arts contestant's body weight is 5% or more over the contracted weight, the mixed martial arts contestant will be disqualified for the bout, and the mixed martial arts contestant and the mixed martial arts contestant's manager may receive disciplinary action by the Superintendent.

(g) If, in an attempt to make weight, the mixed martial arts contestant shows evidence of significant dehydration, of having taken diuretics or other drugs, or of having used any other harsh modality, the examining physician may disqualify the mixed martial arts contestant and recommend disciplinary action by the Superintendent.

(h) Forfeiture for failure to make weight.

(A) A professional mixed martial arts contestant who fails to make the weight agreed upon in his or her bout agreement forfeits twenty percent of his or her purse to his or her opponent, if the fight takes place.

(B) If, during the 2 hours following the time of weighing in, a mixed martial arts contestant is able to make the weight or weighs less than 1 pound outside the agreed limits, no forfeit may be imposed or fine assessed upon him or her.

(C) If a mixed martial arts contestant agrees to fight an opponent who has failed to make weight, the fight may to take place. The requirements of the bout agreement shall be revised to reflect the agreed upon weight.

(2) Pre- and Post-Fight Medical Exams. Prior to the Commission weigh in, contestants shall be subject to a pre-fight medical exam in accordance with standards approved by the Medical Advisory Board of the Commission.

(a) The medical personnel conducting the pre-fight medical exam shall determine the fitness of the contestant to compete in the contest or exhibition based on standards approved by the Medical Advisory Board.

(b) Upon completion of the contest or exhibition, contestants shall be subject to a post-fight medical exam by the ringside physician or medical personnel assigned to the event. The examiner conducting the exam shall submit to the Executive Director a report documenting contestant injuries and indicating recommended suspensions, if any. Suspensions shall include limits on contact as well as participation in future competition. Suspensions may also include any required tests or follow up treatment recommended by the examiner.

(3) Seconds. All seconds working in the corner of a professional mixed martial arts contestant must be licensed. Seconds working in the corner of an amateur mixed martial arts contestant may be licensed.

(a) The conduct and activities of licensed seconds shall be in accordance with standards issued by the Commission. All materials utilized in a corner of a mixed martial arts competition shall be inspected and approved by the Commission. Three seconds per fighter will be allowed in a non-championship bout. Four seconds will be allowed in a championship bout. No more than two seconds are allowed between rounds in a fenced area. One second is allowed between rounds in a ring.

(b) A license issued to a second can be immediately suspended by the Executive Director or the Executive Director's designee.

(c) Licensed seconds shall comply with the direction of the Executive Director and other Commission officials appointed by the Commission.

(d) If, during a round, a second decides to stop a competition by corner submission, the second shall do so by stepping onto the apron of the ring or fenced area. A second shall not throw a towel or any other object into the ring or fenced area.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.113
Hist.: SAC 1-2008(Temp), f. & cert. ef. 1-29-08 thru 6-30-08; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

230-140-0040
Conduct of Bouts

(1) Venue. The proposed venue for a Mixed Martial Arts event shall be approved by the Executive Director. The venue must comply with applicable fire and safety regulations and dressing rooms and other facilities must meet standards of OAR chapter 230.

(2) **Rules Meeting**. The Executive Director or the Executive Director's designee shall preside at a rules meeting before any mixed martial arts event.

(3) Promoter's Safety Responsibility. It shall be the promoter's responsibility to ensure safety for the contestants, officials and spectators. This includes the responsibility to provide adequate licensed, qualified and trained security personnel to maintain order. This also includes the responsibility to provide an onsite ambulance, or an adequate alternative approved by the Executive Director if an ambulance is unavailable.

(4) **Mixed Contests**. Mixed martial arts contests and exhibitions must be between contestants of the same sex.

(5) **Contracts with Professional Contestants**. The Promoter shall provide copies of the bout agreements to the Executive Director or the Executive Director's designee at least 24 hours before the event. The contracts with the contestants shall contain at least the following components:

(a) Total Purse Amount;

(b) The scheduled date, location, and time of the contest or exhibition;

(c) A 20% penalty for failure to make the agreed upon weight limit at the official weigh in conducted by the Commission; and

(d) Any deductions from the contestant's purse must be stipulated in the contract, or will not be allowed. (e.g.: travel expenses, licensing fees, medical testing expenses, etc.)

(6) **Payment of Contestants**. All professional contestants shall be paid in full according to their contracts, if applicable, and no part or percentage of their remuneration may be withheld except by order of the

Executive Director or the Superintendent, nor shall any part thereof be returned through arrangement with the contestant's manager to any matchmaker, assistant matchmaker, or club official. The contestant or manager may not assign their respective share of the purse, if applicable, or any portion thereof, without the written approval of the Executive Director or the Superintendent. A written request for such assignment must be filed with the Executive Director at least 72 hours before the contest or exhibition.

(7) **Time and Manner of Payment**. All purse money must be furnished by check to the Executive Director at least 24 hours before the commencement of an event.

(a) Immediately following an event, the Executive Director shall deliver such checks to the payees thereof and reflect such delivery on the payoff sheet. In the case of a percentage contract, payment of purses shall be made immediately after the percentage is determined by the Executive Director.

(b) If the referee fails to render a decision at the termination of any bout, the Executive Director shall retain the payment check, if applicable, for each contestant pending a final determination by the Superintendent.

(8) **Requirements for ring or fenced area**. Mixed martial arts contests and exhibitions may be held in a ring or in a fenced area that has been approved by the Executive Director.

(a) A ring used for a contest or exhibition of mixed martial arts must meet the following requirements:

(A) The ring must be no smaller than 16 feet square and no larger than 32 feet square within the ropes.

(B) The ring floor must extend at least 18 inches beyond the ropes. The ring floor must be padded with ensolite or another similar closed-cell foam, with at least a 1-inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps or ridges must not be used.

(C) The ring platform must not be more than 4 feet above the floor of the building and must have suitable steps for the use of the participants and officials.

(D) Ring posts must be made of metal, extending from the floor of the building and must be properly padded in a manner approved by the Commission. Ring posts must be at least 18 inches away from the ring ropes.

(E) There must not be any obstruction or object, including, regardless of size, a triangular border on any part of the ring floor.

(b) A fenced area used in a contest or exhibition of mixed martial arts must meet the following requirements:

(A) The fenced area must be of a shape and dimensions approved by the Commission Executive Director and must be no smaller than 18 feet wide at its widest point where it touches the mat.

(B) The floor of the fenced area must be padded with ensolite or another similar closed-cell foam, with at least a 1-inch layer of foam padding, with a top covering of canvas, duck or similar material tightly stretched and laced to the platform of the fenced area. Material that tends to gather in lumps or ridges must not be used.

(C) The platform of the fenced area must not be more than 4 feet above the floor of the building and must have suitable steps for the use of the participants and officials.

(D) Fence posts must be made of metal, above the floor of the fenced area, and must be properly padded in a manner approved by the Commission.

(E) The fencing used to enclose the fenced area must be made of a material that will prevent a mixed martial arts contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators.

(F) Any metal portion of the fenced area must be covered and padded in a manner approved by the Commission and must not be abrasive to the participants.

(G) The fenced area must have two entrances unless otherwise approved by the Executive Director.

(H) There must not be any obstruction on any part of the fence surrounding the area in which the participants are to be competing.

(I) There must be a secure barrier of at least four feet between a fenced area and the first row of public seating that allows freedom of movement of Commission officials and representatives.

(J) The area immediately surrounding a ring or a fenced area is subject to the control of the Commission. Access must be effectively controlled by event security staff. The seating around the apron of the ring or fenced area cannot be sold. An area for credentialed media personnel may be allowed with approval by the Executive Director.

(K) Cameras are allowed on the apron during a round with Executive Director approval as long as their presence does not compromise the safety of the contestants or the ability of the Commission staff to perform their functions.

(L) There must be adequate space provided in each contestant's 'corner' for licensed Seconds to sit during a round.

(9) **Selection and approval of ring officials**. The ring officials of contests or exhibitions are the referee, judges, timekeeper, physician and medical personnel, inspectors, and Commission's representative. The Commission Executive Director shall select and appoint all officials.

(10) **Bandages for hands of mixed martial arts** contestants. Bandages for the hands of contestants in mixed marshal arts contests or exhibitions must comply with this subsection.

(a) Bandages on the hand of a mixed martial arts contestant may not exceed one winding of surgeon's adhesive tape, not over 1 1/2 inches wide, placed directly on the hand to protect the part of the hand near the wrist. The tape may cross the back of the hand twice, but may not extend within three-fourths of an inch of the knuckles when the hand is clenched to make a fist.

(b) Each mixed martial arts contestant shall use soft surgical bandage or gauze not over 2 inches wide, held in place by not more than 6 feet of surgeon's adhesive tape for each hand. Up to one 15-yard roll of bandage may be used to complete the wrappings for each hand. Strips of tape may be used between the fingers to hold down the bandages.

(c) Bandages must be adjusted in the dressing room in the presence of a representative of the Commission and both mixed martial arts contestants. Either contestant may waive his or her right to witness the bandaging of his or her opponent's hands.

(11) **Gloves**: Requirements; replacement during contest or exhibition. The gloves used in a contest or exhibition must meet the following requirements:

(a) The gloves must be examined by the representative of the Commission and the referee. If padding in any glove is found to be misplaced or lumpy or if any glove is found to be unfit, the glove must be changed before the contest or exhibition starts. No breaking, roughing or twisting of gloves is permitted.

(b) The gloves for every contest or exhibition that is designated as a main event must be new, furnished by the promoter and made to fit the hands of the contestant.

(c) If gloves to be used in preliminary contests or exhibitions have been used before, they must be whole, clean and in sanitary condition. The gloves are subject to inspection by the referee or representative of the Commission. If a glove is found to be unfit, it must be replaced with a glove that meets the requirements of this section. Gloves may not be used for more than one contest during an event.

(d) Each promoter must have an extra set of gloves of the appropriate weight available to be used in case a glove is broken or otherwise damaged during the course of a contest or exhibition.

(e) For contests or exhibitions of mixed martial arts, each contestant must wear gloves that weigh not less than 4 ounces.

(f) Both contestants shall use the same brand and model of gloves for their contest or exhibition, unless approved by the Executive Director, or designee.

(12) **Duration**. Except with the approval of the Commission Executive Director:

(a) A non-championship contest or exhibition of mixed martial arts must not exceed three rounds in duration.

(b) A championship contest of mixed martial arts must be five rounds in duration.

(c) A round in a contest or exhibition of professional mixed martial arts must be five minutes in duration. A period of rest following a round of mixed martial arts must be one minute in duration.

(d) A round in an amateur mixed martial arts contest must be three minutes in duration.

(13) **Method of judging**.

(a) Each judge of a contest or exhibition of mixed martial arts that is being judged shall score the contest or exhibition and determine the winner through the use of the following system:

(A) The better contestant of a round receives 10 points and his/her opponent proportionately less.

(B) If the round is even, each contestant receives 10 points.

(C) No fraction of points may be given.

(D) Points for each round must be awarded immediately after the end of the round. A record of those points is given to a Commission representative before the next round begins.

(b) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the Commission's desk.

(c) The majority opinion is conclusive and, if there is no majority, the decision is a draw.

(d) When the Commission's representative has checked the scores, the Commission's representative shall inform the announcer of the decision. The announcer shall inform the audience of the decision over the speaker system.

(14) **Acts constituting fouls**. The following acts constitute fouls in a contest or exhibition of mixed martial arts:

(a) Butting with the head.

(b) Eye gouging of any kind.

(c) Biting.

(d) Hair pulling.

(e) Fishhooking.

(f) Groin attacks of any kind.

(g) Putting a finger into any orifice or into any cut or laceration on an opponent.

(h) Small joint manipulation.

(i) Striking to the spine or the back of the head.

(j) Striking downward using the point of the elbow. (Commonly referred to as a "12 to 6" motion.)

(k) Throat strikes of any kind, including, without limitation, grabbing the trachea.

(l) Clawing, pinching or twisting the flesh.

(m) Grabbing the clavicle.

(n) Kicking the head of a grounded opponent.

(o) Kneeing the head of a grounded opponent.

(p) Stomping a grounded opponent.

(q) Kicking to the kidney with the heel.

(r) Spiking an opponent to the canvas on his/her head or neck.

(s) Throwing an opponent out of the ring or fenced area.

(t) Holding the shorts or gloves of an opponent.

(u) Spitting at an opponent.

(v) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.

(w) Holding the ropes or the fence.

(x) Using abusive language in the ring or fenced area.

(y) Attacking an opponent on or during the break.

(z) Attacking an opponent who is under the care of the referee.

(aa) Attacking an opponent after the bell has sounded the end of the round.

(bb) Failing to comply with the instructions of the referee.

(cc) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.

(dd) Interference by the corner.

(ee) Throwing in the towel during competition.

(ff) Elbow strikes to any part of the body (unless approved by the Executive Director prior to the match).

(gg) Twisting Leg Locks (Amateurs Only).

(15) **Fouls**: **Deduction of points**. If a mixed martial arts contestant fouls his/her opponent during a contest or exhibition of mixed martial arts, the referee may penalize the contestant by deducting points from the contestant's score, whether or not the foul was intentional.

(a) The referee may determine the number of points to be deducted in each instance and shall base the determination on the severity of the foul and its effect upon the opponent.

(b) When the referee determines that it is necessary to deduct a point or points because of a foul, the referee shall warn the offender of the penalty to be assessed.

(c) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(d) Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

(16) **Fouls**: **Intentional**. If a foul is determined by the referee to be intentional and causes the opponent to be unable to continue, the offending contestant is disqualified.

(17) **Fouls**: **Accidental**.

(a) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the contestant who has been fouled can continue or not. If the contestant's chance of winning has not been seriously jeopardized as a result of the foul the referee may order the contest or exhibition continued after a recuperative interval of not more than five minutes. The length of the recuperative time is determined by the referee. Immediately after separating the contestants, the referee shall inform the Commission's representative of his/her determination that the foul was accidental.

(b) If the referee determines that a contest or exhibition of mixed martial arts may not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition must be declared a no contest if the foul occurs during:

(A) The first two rounds of a contest or exhibition that is scheduled for three rounds or less; or

(B) The first three rounds of a contest or exhibition that is scheduled for more than three rounds.

(c) If an accidental foul renders a contestant unable to continue the contest or exhibition after:

(A) The completed second round of a contest or exhibition that is scheduled for three rounds or less; or

(B) The completed third round of a contest or exhibition that is scheduled for more than three rounds, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(d) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(18) **Results of contests**. A contest of mixed martial arts may end with the following results:

(a) Submission by:

(A) Physical tap out.

(B) Verbal tap out.

(C) Corner stoppage.

(b) Technical knockout by the referee stopping the contest.

(c) Decision via the scorecards, including:

(A) Unanimous decision.

(B) Split decision.

(C) Majority decision.

(D) Draw, including:

(i) Unanimous draw.

(ii) Majority draw.

(iii) Split draw.

(d) Technical decision.

(e) Technical draw.

(f) Disqualification.

(g) Forfeit.

(h) No contest.

(19) **Professional and amateur mixed martial arts**; **Weight classes**. Except with the approval of the Commission or its Executive Director, the weight classes for contests, matches, or exhibitions of mixed martial arts are as follows:

(a) Flyweight, up to and including 125 lbs.

(b) Bantamweight, over 125 to and including 135 lbs.

(c) Featherweight, over 135 to and including 145 lbs.

(d) Lightweight, over 145 to and including 155 lbs.

(e) Welterweight, over 155 to and including 170 lbs.

(f) Middleweight, over 170 to and including 185 lbs.

(g) Light Heavyweight, over 185 to and including 205 lbs.

(h) Heavyweight, over 205 to and including 265 lbs.

(i) Super Heavyweight, over 265 lbs.

Stat. Auth. ORS 463.113 & 463.185

Stats. Implemented: ORS 463.025, 463.035, 463.113 & 463.185

Hist.: SAC 1-2008(Temp), f. & cert. ef. 1-29-08 thru 6-30-08; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08

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Department of Revenue
Chapter 150

Rule Caption: Withholding requirement for real estate transactions, inheritance tax credit for natural resource and fishing property.

Adm. Order No.: REV 4-2008(Temp)

Filed with Sec. of State: 5-23-2008

Certified to be Effective: 5-23-08 thru 11-17-08

Notice Publication Date:

Rules Adopted: 150-118.140

Rules Amended: 150-314.258

Subject: OAR 150-118.140, adopted May 22, 2008, describes the requirements for claiming an inheritance tax credit for certain natural resource or fishing property. The rule provides definitions and information regarding how to file amended returns reflecting the new law.

OAR 150-314.258, adopted May 8, 2008, defines terms and explains how withholding is calculated and remitted to the department for certain real estate transactions. The rule explains how to complete written affirmations for persons exempt from the withholding requirement and how to submit those affirmations to the department.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-118.140
Inheritance Tax Credit for Natural Resource or Commercial Fishing Propert

(1) Definitions. The following definitions apply for purposes of ORS 118.140 and this rule:

(a) "Active Management" is defined by Internal Revenue Code (IRC) Section 2032A(e)(12) and means the making of the management decisions of a business (other than the daily operating decisions). Treasury Regulations 20.2032A-3(e) through (g) provide additional examples of active management.

(b) "Adjusted gross estate" means the value of the gross estate reduced by the sum of the amounts allowable as a deduction under either IRC sections 2053 or 2054, or both. The amount is determined on the basis of the facts and circumstances in existence on the date (including extensions) for filing the return of tax imposed by this chapter (or, if earlier, the date on which the return is filed).

(c) "Domestic partner" means an individual who has entered into a domestic partnership as defined in Chapter 99, Oregon Laws 2007.

(d) "Member of family" means, with respect to a decedent:

(A) An ancestor of the decedent;

(B) The spouse or domestic partner of the decedent;

(C) A lineal descendant of the decedent, of the decedent's spouse or domestic partner, or of a parent of the decedent, or

(D) The spouse or domestic partner of any lineal descendant described in paragraph (C). For purposes of the preceding sentence, a legally adopted child of an individual is treated as the child of such individual by blood.

(2) Federal Elections Binding for Oregon. Because ORS 118.007 ties Oregon inheritance tax law to the Internal Revenue Code as it existed on December 31, 2000, elections that were available on December 31, 2000, and that are made for federal estate tax purposes are binding for Oregon inheritance tax purposes unless specifically provided otherwise by statute or rule.

Example 1: Edwina died on July 1, 2007; her husband survives her. The value of her gross estate is $8,000,000, made up entirely of natural resource property. For federal estate tax purposes, the estate elects a marital deduction of $6,000,000. The unified credit offsets tax otherwise due on the balance of the estate, $2,000,000, and there is no federal tax due. For Oregon purposes, the $6,000,000 marital deduction election applies. In addition, the estate may elect to establish a Special Oregon Marital property trust as provided in ORS 118.016 to shelter $1,000,000 of the value of the estate (the difference between the $1,000,000 Oregon taxable estate and the $2,000,000 federal taxable estate). Alternatively, the estate may use any portion of the $2,000,000 in value to claim a natural resource credit against tax imposed on the estate.

(3) Active Management by a Member of Family. If natural resource property or a fishing business is owned indirectly by the decedent or a member of the family, the following requirements must be met to qualify for a credit under ORS 118.140:

(a) At least one member of the family must engage in active management of the natural resource property or fishing business after the transfer.

(A) The determination of whether active management occurs is factual, and the requirement can be met even though no self-employment tax is payable by the member of the family with respect to income derived from the farm or other trade or business operation.

(B) Among the farming activities, various combinations of which constitute active management, are inspecting growing crops, reviewing and approving annual crop plans in advance of planting, making a substantial number of the management decisions of the business operation, and approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended.

(C) Examples of active management decisions are what crops to plant or how many cattle to raise, what fields to leave fallow, where and when to market crops and other business products, how to finance business operations, and what capital expenditures the trade or business should make.

(b) An otherwise qualifying natural resource property or fishing business qualifies for the credit without active management if it is the subject of a net cash lease to or from the decedent or a member of the family.

(c) The property also qualifies for the credit if it is held in trust for a member of the family or if the property is transferred directly to a member of the family.

(d) If an indirect interest is held in trust for a member of the family, it qualifies as long as a member of the family is engaged in the active management of the business.

(e) The trustee does not have to be engaged in active management if these requirements are met.

(4) Prior Use Requirement. An estate that otherwise qualifies for the fishing business property credit is not required to meet the aggregate use period of five out of eight years ending on the date of the decedent's death. Active management is not required for natural resource property prior to death.

Example 2: Kelly died on April 3, 2007. Kelly owned and operated Kelly's Fishing Boat business starting in February 2005. The estate files the tax return with the department on June 17, 2008, claiming the fishing business credit, and pays the inheritance tax due. The estate may claim the fishing business credit providing all other requirements to qualify for the credit are met.

(5) Interest and Penalty. The department will not charge penalty or interest if an estate claims a natural resource property or fishing business property credit or if the estate is directly affected by the changes made to ORS 118.140 by chapter 28, Oregon Laws 2008 and the return is filed and tax is paid before September 1, 2008. This provision applies to estates of decedents dying on or after January 1, 2007, and before December 1, 2007.

Example 3: John died on June 23, 2007. The regular due date of the inheritance tax return is March 23, 2008. The estate files the return with the department on August 29, 2008, claiming the natural resource credit, and pays the inheritance tax due. Because the return is filed and the tax is paid before September 1, 2008, the interest and penalty which would otherwise result from late filing and late payment is cancelled.

Stat. Auth.: ORS 305.100, 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 4-2008(Temp), f. & cert. ef. 5-23-08 thru 11-17-08

150-314.258
Withholding on Real Property Interest Conveyances

(1) Definitions. For purposes of ORS 314.258 and this rule:

(a) "Authorized agent" does not include an employee of a transferee who merely makes payments to a transferor in connection with a conveyance nor an authorized agent who merely performs services such as inspections, appraisals, drafting services, and recording services performed for the benefit of a transferor or transferee in a conveyance.

(b) "Consideration" includes any encumbrance that the transferee agrees to pay or assume as well as the fair market value of any property conveyed or transferred to a transferor, or the fair market value of any service provided to a transferor.

(2) Withholding requirements. Except as provided in subsection (2)(a) of this rule, an authorized agent must withhold tax for the year in which income is recognized for Oregon tax purposes and remit the tax withheld to the department.

(a) An authorized agent is not required to withhold if:

(A) The withholding amount calculated is less than $100 per transferor;

(B) The total consideration for the property is less than or equal to $100,000;

(C) The person making a conveyance is a resident of Oregon as defined in ORS 316.027 on the closing date of the conveyance;

(D) The person making a conveyance is a C-Corporation that is qualified to do business in Oregon on the closing date of the conveyance;

(E) The transferor delivers to the authorized agent a written assurance as required in IRC section 6045(e) that the entire gain qualifies for exclusion under IRC section 121;

(F) The transferor is an estate, certain trusts, S corporation, general partnership, or limited partnership, or a limited liability company that for purposes of Treasury Regulation section 301.7701-3 has not elected to be classified as an association taxable as a corporation and is not a disregarded entity the sole member of which is a transferor within the meaning of ORS 314.258(1)(f);

(G) The transferor is an agency or instrumentality of the United States or the State of Oregon or is a city, county, or other municipal or public corporation;

(H) The authorized agent is an attorney involved in a transaction where a licensed escrow agent is providing services for the conveyance; or

(I) The transferor or the transferor's tax advisor executes a written affirmation under penalty of perjury that the conveyance is not likely to be taxable to the transferor under Oregon law during the tax year of the

transferor in which the conveyance occurs. Examples of such transactions include but are not limited to a conveyance that constitutes or is accomplished as part of:

(i) A transfer that is the sale of a principal residence and the gain qualifies for exclusion under IRC section 121;

(ii) A transfer to a corporation controlled by the transferor for purposes of IRC section 351;

(iii) A transfer pursuant to a tax-free reorganization under IRC section 361;

(iv) A transfer by a tax-exempt entity that does not give rise to unrelated business taxable income to the transferor under IRC section 512;

(v) A transfer to a partnership in exchange for an interest in the partnership such that no gain or loss is recognized under IRC section 721;

(vi) A transfer that qualifies for nonrecognition under IRC section 1031 or 1033 and the transferor enters into such a transaction;

(vii) A transfer between spouses or incident to divorce for purposes of IRC section 1041; or

(viii) Any other transaction in which gain is not recognized for purposes of ORS chapters 316, 317, and 318, as explained to the department in writing at the time the transaction is completed.

(b) The authorized agent must send the tax withheld to the department within 20 days of the date the proceeds from the conveyance are disbursed to the transferor.

(c) If there is more than one transferor for one parcel, the authorized agent must withhold tax on each non-exempt transferor as if all transferors had equal ownership in the real property interest unless the transferor establishes to the authorized agent the actual ownership percentage in the real property, such as through recorded documents, tenancy-in-common agreements, or other documents. If the transferor establishes other than equal ownership, the authorized agent must withhold in proportion to each non-exempt transferor's actual ownership percentage in the real property.

(d) A transferor may claim the amount withheld by an authorized agent as a credit on the transferor's corresponding personal income tax return or corporate income or excise tax return.

(e) If the transferor is a limited liability company the sole member of which is a transferor within the meaning of ORS 314.258(1)(f) (2008) and the limited liability company is a disregarded entity for federal income tax purposes, the transferor is the single member for purposes of this rule.

(3) Calculation of amount to be withheld.

(a) An authorized agent is required to withhold and remit to the department the least of:

(A) Four percent of the consideration for the real property payable to the transferor;

(B) Eight percent of the amount of gain from the conveyance that is includable in the transferor's Oregon taxable income; or

(C) The net proceeds from the conveyance payable to the transferor.

(c) A transferor subject to withholding must deliver to an authorized agent at or before conveyance of the real property a written affirmation, signed under penalty of perjury, identifying the amount of withholding required by subsection (a) of this section. If the transferor fails to timely deliver the form, the authorized agent must withhold four percent of the amount of consideration, or if less, all the net proceeds.

Example 1: Anne sold her rental property for $300,000. Her federal and Oregon adjusted basis in the property is $250,000. She has an outstanding mortgage against the property of $157,000 and closing costs are $3,350. At closing, she determines she is not exempt from withholding so her escrow officer must withhold tax based on the least of four percent of the consideration, eight percent of the gain includable in Oregon taxable income, or all of the net proceeds.

Step 1) Determine four percent of the consideration. In this case, it is $12,000 ($300,000 x 0.04 = $12,000).

Step 2) Determine eight percent of the gain includable in Oregon taxable income as follows:

$300,000 Consideration less

$250,000 Federal and Oregon adjusted basis equals

$50,000 Gain

$4,000 ($50,000 x 0.08 = $4,000) is eight percent of the gain.

Step 3) Determine the "net proceeds" as follows:

$139,650 Net amount disbursed to seller ($300,000 consideration - $157,000 mortgage – $3,350 closing costs = $139,650) $139,650 is the "net proceeds" from this conveyance.

Step 4) Because eight percent of the gain ($4,000) is the lowest of the amounts calculated in steps one, two, or three, Anne's escrow officer would withhold and remit $4,000.

(d) Installment sales. If a transferor elects to recognize income from the conveyance using the installment method under IRC section 453, the transferor may reduce the gain by the amount of the installment that will be recognized in future years. The withholding calculation is based on the entire consideration and net proceeds, or the modified gain to determine the lowest of the three methods provided in subsection (a) of this section.

Example 2: Assume the same facts as Example 1 except that Anne is selling the property on an installment basis and recognizing the income from the sale using the installment method under IRC section 453 over five years in equal installments. Because Anne is selling the property over time, the amount of gain includable in Oregon taxable income is $10,000 for the year of the conveyance ($50,000 ÷ 5 years = $10,000) and $10,000 in each year thereafter. Eight percent of the amount included in Oregon taxable income is $800. Anne's escrow officer would withhold and remit $800 for the year of the conveyance because it is the least amount using the three methods provided in subsection (a) of this section.

(e) Deferred exchanges. If a transferor enters into a like-kind exchange under IRC section 1031, withholding is not necessary at the time the transferor relinquishes the property to a Qualified Intermediary (QI) unless part of the proceeds from the sale are disbursed to the transferor.

Example 3: Robert entered into an exchange under IRC section 1031 to defer tax on the gain from the sale of his rental property. The consideration for the property was $500,000. Robert's federal and Oregon adjusted basis in the property is $150,000. He holds a first mortgage of $190,000 and he incurred $10,000 in costs related to the conveyance. Robert requested $50,000 of the consideration to be paid to him directly. Robert's escrow officer transferred title of the property and $250,000 of the consideration to a QI and the escrow officer disbursed $50,000 directly to Robert as requested. The escrow officer is required to withhold on the amount disbursed to Robert as follows:

Step 1) Determine four percent of the consideration. In this case, it is $20,000 ($500,000 x 0.04 = $20,000).

Step 2) Determine eight percent of the gain includable in Oregon taxable income as follows:

$500,000 Consideration

$150,000 Federal and Oregon adjusted basis

$350,000 Gain

$300,000 Gain eligible for deferral under IRC section 1031

$50,000 gain includable in Oregon taxable income.

Eight percent of the gain is $4,000.

Step 3) Determine the "net proceeds" as follows:

$50,000 Net amount disbursed to seller shown on the settlement statement before reducing for withholding.

Step 4) The lowest of the amounts calculated in steps one, two, or three is $4,000 (8 percent of the gain). Robert's escrow officer would withhold and remit $4,000.

(4) Written affirmation.

(a)(A) To claim exemption under subparagraph (2)(a)(I) of this rule, the transferor or the transferor's tax advisor must complete and sign a written affirmation under penalty of perjury, that the transferor is exempt from withholding because the transferor is unlikely to owe Oregon tax as a result of the conveyance, before the funds related to the transaction are disbursed.

(B) To determine whether the transferor is unlikely to owe Oregon income tax as a result of the conveyance, the gain may not be offset against any other items of gain, loss, deduction, or credit the transferor expects to claim on the related tax return unless the item is directly related to the conveyance. For example, when a California resident must pay tax to both Oregon and California on the gain from the sale of the Oregon property, the California resident will claim the credit for taxes paid to another state on the Oregon nonresident return so the transferor has established that he or she is unlikely to owe Oregon tax as a result of the conveyance.

(C) The transferor must provide the completed written affirmation to the authorized agent providing closing and settlement services.

(b) Basing withholding on the amount of includible gain. If the transferor is subject to withholding, the transferor may calculate tax based on the amount of gain includible in Oregon taxable income. The transferor must complete and sign the written affirmation under penalty of perjury that the calculation is true and accurate to the best of the transferor's knowledge.

(c) Sale of a principal residence. The gain from the sale of a principal residence may qualify for exemption from withholding under either ORS 314.258(3)(e) or ORS 314.258(3)(f). If the transferor is eligible to exclude the entire gain under IRC section 121, they must complete a written assurance similar to that found in IRC section 6045(e) pursuant to ORS 314.258(3)(e) and this rule. If the transferor completes the written assurance, it is in lieu of the written affirmation required under ORS 314.258(3)(f) and subsection (4)(a) of this rule and the transferor need not complete the written affirmation. However, the authorized agent must provide the information contained in the written assurance in the same manner as information contained in the written affirmation. If the gain is not fully excludible under IRC section 121, the transferor must complete the written affirmation calculating the gain under penalty of perjury.

(d) In addition to retaining the completed written affirmation or assurance in the authorized agent's records, the authorized agent must send a copy of the affirmation or assurance to the department within 30 days of the date of the conveyance.

(5) Failure to withhold.

(a)An authorized agent who relies on the written representation made by the transferor that the transferor is either exempt from or not subject to withholding, is not liable for amounts required to be withheld under ORS 314.258. An authorized agent who relies on the calculation shown on the written affirmation provided by the transferor is not liable for the amount that was required to be withheld in excess of that shown on the written

affirmation. The transferor is liable for the tax and may be subject to interest charged on the underpayment of estimated tax.

(b) Penalty assessment. The department may assess a failure-to-withhold penalty if an authorized agent fails to demonstrate to the department's satisfaction that the authorized agent met the requirements of ORS 314.258.

(A) For conveyances that occurred before May 23, 2008, the department will not assess the failure-to-withhold penalty if an authorized agent met the requirements of either ORS 314.258 (2007) or 314.258 (2008).

(B) For conveyances that occurred on or after May 23, 2008, the department will not assess the failure-to-withhold penalty if an authorized agent met the requirements of ORS 314.258 (2008) and related rules.

(6) Failure to remit. If an authorized agent withholds tax from the transferor's disbursal and fails to remit the same amount to the department timely, the authorized agent is liable to the State of Oregon for those amounts. The department may collect such amounts from the authorized agent together with interest under ORS 305.220.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.258
Hist.: REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 4-2008(Temp), f. & cert. ef. 5-23-08 thru 11-17-08

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Department of Transportation
Chapter 731

Rule Caption: Prequalification for Bidding: Requirements for Mandatory General Prequalification and Special Prequalification.
Adm. Order No.: DOT 2-2008
Filed with Sec. of State: 5-19-2008
Certified to be Effective: 5-19-08
Notice Publication Date: 4-1-2008
Rules Amended: 731-005-0450
Rules Repealed: 731-005-0450(T)
Subject: This amendment relates to prequalification requirements for bidding on ODOT Highway and Bridge public improvement projects. It changes the Mandatory General Prequalification requirement to apply only to projects $100,000 and over and allows for Special Prequalification even when the Mandatory General Prequalification is not required. ODOT has implemented a new Small Contracting Program for Construction that targets small contractors enabling them to competitively bid as a prime contractor on construction projects under $100,000. By lifting the requirement of Mandatory General Prequalification for projects $100,000 and under, the small contracting business will be allowed to use the less stringent prequalification termed Special Prequalification rather than undergo the more rigorous Mandatory General Prequalification process, and also will not be subject to an annual application fee of $100.
Rules Coordinator: Lauri Kunze—(503) 986-3171

731-005-0450
Prequalification of Offeror

(1) Prequalification.

(a) Mandatory Prequalification. ODOT requires mandatory general prequalification of Offerors on forms prescribed by ODOT. Annual prequalification with ODOT is required to bid on any Public Improvement project ODOT may advertise. Prequalification applications must be received by ODOT on the ODOT "Contractor's Prequalification Application" form ten Days prior to Bid Opening. The application must be completed in its entirety or a Bidder's Offer will be rejected. See OAR 734-010-0220 through 734-010-0280.

(b) Special Prequalification. ODOT must indicate in the Solicitation Document if it will require a special mandatory prequalification in addition to the general prequalification. Special prequalifications may be used for projects of a particularly complex nature, using products requiring highly specialized skills, or when a mandatory general prequalification is not required. The solicitation documents shall indicate the requirements and time frame for special prequalifications.

(2) Standards for Prequalification. Standards for prequalification are identified in OAR chapter 734 division 10.

(3) Subsection (1)(a) of this rule does not apply to public improvement contracts with a value, estimated by ODOT, of less than $100,000; however, ODOT may require a special contractor prequalification under subsection (1)(b) even when there is no mandatory prequalification.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430 & 279C.435
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 1-2007, f. & cert. ef. 1-24-07; DOT 1-2008(Temp), f. & cert. ef. 1-24-08 thru 7-22-08; DOT 2-2008, f. & cert. ef. 5-19-08

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Rule Caption: Bid or Proposal Security: Allows Agency more flexibility in proposal security requirements.
Adm. Order No.: DOT 3-2008
Filed with Sec. of State: 5-19-2008
Certified to be Effective: 5-19-08
Notice Publication Date: 4-1-2008
Rules Amended: 731-005-0550
Rules Repealed: 731-005-0550(T)
Subject: This rule relates to the security requirements for bids and proposals. The amendment changes the rule to be in alignment with Oregon Statute which allows more flexibility in proposal security requirements. Specifically, it allows less restrictive requirements for proposal security by removing the requirement of a 10 percent security for proposals, and instead allows a proposal security in an amount that ODOT determines to be reasonably necessary. This change accommodates use of a new contracting method called Construction Manager/General Contractor (CM/GC) where the price is not proposed until well after the contract is executed. Additionally, this rule change allows ODOT to require Proposal security even when the contract is being negotiated.
Rules Coordinator: Lauri Kunze—(503) 986-3171

731-005-0550
Bid or Proposal Security

(1) Security Amount. If ODOT requires Bid security, it shall be 10% of the Offeror's Bid. If ODOT requires Proposal security, it shall be in an amount that ODOT determines to be- reasonably necessary or prudent to protect the interests of ODOT, and such amount shall be stated in the Solicitation Document. ODOT shall not use Bid or Proposal security to discourage competition. ODOT shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond and any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless ODOT has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to ORS 279C.390, ODOT shall require Bid security for its solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by ODOT, of more than $50,000. See ORS 279C.365(6). ODOT may require Bid security even if it has exempted a class of solicitations from Bid security. ODOT may, at its option, require Proposal security that serves the same function with respect to Proposals that Bid security serves with respect to Bids. See ORS 279C.365(5) and 279C.400(5).

(3) Form of Bid or Proposal Security. ODOT 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. If a surety bond is submitted, ODOT's standard Bid or Proposal bond form must be used, which is included with the Bid or Proposal booklet. The original bond must be submitted with the surety company's seal affixed, or in the case of an Electronic Offer, an electronic version of the bid bond may be submitted.

(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 made out to the Oregon Department of Transportation.

(4) Return of Security. ODOT shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. ODOT may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.365, 279C.380, 279C.385, 279C.390, and 279C.400
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 4-2007, f. & cert. ef. 5-23-07; DOT 7-2007(Temp), f. & cert. ef. 12-24-07 thru 6-9-08; DOT 3-2008, f. & cert. ef. 5-19-08

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

Rule Caption: Release of a Non-Mandatory Report Submitted to DMV.
Adm. Order No.: DMV 11-2008
Filed with Sec. of State: 5-19-2008
Certified to be Effective: 5-19-08
Notice Publication Date: 3-1-2008
Rules Amended: 735-076-0005
Rules Repealed: 735-076-0005(T)
Subject: Amended OAR 735-076-0005 clarifies that a report submitted to DMV to report a physical or mental impairment affecting driving ability or dangerous or unsafe driving behaviors must be in writing and that such a report submitted by police or a judge is not confidential and a copy may be released to the person who is the subject of the report pursuant to a Public Record request.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-076-0005
Reporting Requirements

(1) In order for DMV to process a non-mandatory report that indicates a person may no longer be qualified for driving privileges or may no longer be able to safely operate a motor vehicle, it must be in writing and contain:

(a) The name of the person making the report, including a signature;

(b) The name and date of birth of the person being reported or a description of the person sufficient for DMV to identify the reported person from its records; and

(c) Sufficient information to give DMV reason to believe the person may no longer be qualified to hold a driver license, driver permit, or endorsement or may no longer be able to drive safely. For purposes of this rule, sufficient information includes but is not limited to:

(A) A physician or health care provider report of a physical or mental condition or impairment that is not reportable as required under OAR chapter 735 division 74 and includes a description of how the person's ability to drive safely may be affected;

(B) A report of a physical or mental condition or impairment, and a description of how the person's ability to safely operate a motor vehicle is affected; or a description of unsafe or dangerous driving behavior;

(C) A report by a police officer, physician or health care provider where a physical or mental condition or impairment is stated as a cause or possible cause of a crash or unsafe or dangerous driving behavior;

(D) A self-report on a driver's license/permit issuance, renewal or replacement application of a vision problem affecting driving and failure to pass a DMV administered vision screening;

(E) A self-report on a driver's license/permit issuance, renewal or replacement application of a mental or physical condition or impairment affecting the person's ability to drive safely;

(F) A self-report on a driver's license/permit issuance, renewal or replacement application of a problem condition involving alcohol, inhalants or controlled substances affecting the person's ability to drive safely; or

(G) A report of unsafe or dangerous driving behavior and DMV has reason to believe the driving behavior is likely to recur or similar driving behavior has previously been reported to DMV.

(2) All written documentation voluntarily submitted under this rule, including the name of the person submitting the documentation, will be kept confidential and not released to any person unless:

(a) The report was submitted by a police officer or judge acting within the scope of his or her official duties;

(b) DMV determines the documentation, or any portion thereof, must be released pursuant to the Public Records Law, ORS 192.410 to 192.505, or the Attorney General or a court orders disclosure in accordance with the Public Records Law; or

(c) The documentation is determined by DMV to be necessary evidence in an administrative proceeding involving the suspension or cancellation of the person's driving privileges or right to apply for driving privileges.

(3) Before taking action, DMV may request more information from the person making the report if DMV has reason to believe the information provided is inaccurate or inadequate.

Stat. Auth: ORS 184.616, 184.619, 802.010, 807.340 & 809.419
Stat. Implemented: ORS 807.340
Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 6-2008(Temp), f. & cert. ef. 2-22-08 thru 8-19-08; DMV 11-2008, f. & cert. ef. 5-19-08

Department of Transportation,
Highway Division
Chapter 734

Rule Caption: Prequalification for Bidding: Requirements for Mandatory General Prequalification and Special Prequalification.
Adm. Order No.: HWD 4-2008
Filed with Sec. of State: 5-19-2008
Certified to be Effective: 5-19-08
Notice Publication Date: 4-1-2008
Rules Amended: 734-010-0230, 734-010-0260
Rules Repealed: 734-010-0230(T), 734-010-0260(T)
Subject: This amendment relates to prequalification requirements for bidding on ODOT Highway and Bridge public improvement projects. It changes the Mandatory General Prequalification requirement to apply only to projects $100,000 and over and allows for Special Prequalification even when the Mandatory General Prequalification is not required. ODOT has implemented a new Small Contracting Program for Construction that targets small contractors enabling them to competitively bid as a prime contractor on construction projects under $100,000. By lifting the requirement of Mandatory General Prequalification for projects $100,000 and under, the small contracting business will be allowed to use the less stringent prequalification termed Special Prequalification rather than undergo the more rigorous Mandatory General Prequalification process, and also will not be subject to an annual application fee of $100.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-010-0230
Prequalification for Bidding

(1) Pursuant to ORS 279C.430(1), the Commission requires that all bidders be prequalified within the appropriate class(es) of work contained in the current Contractor's Prequalification Application adopted by ODOT.

(2) Special contractor prequalifications may be required in addition to the mandatory prequalification in subsection (1) when the elements of a particular public improvement project require specialized knowledge and/or expertise, or when a mandatory general prequalification is not required. When special prequalification is required, notice of the Request for Special Contractor Prequalification will be through ODOT's Electronic Procurement System, and in the Daily Journal of Commerce for projects with an estimated cost over $125,000.

(3) Subsection (1) of this rule does not apply to public improvement contracts with a value, estimated by ODOT, of less than $100,000; however, ODOT may require a special contractor prequalification under subsection (2) even where there is no mandatory prequalification

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 1-2007, f. & cert. ef. 1-24-07; HWD 1-2008(Temp), f. & cert. ef. 1-24-08 thru 7-22-08; HWD 4-2008, f. & cert. ef. 5-19-08

734-010-0260
Waiving Prequalification Requirements

Prequalification requirements for contracts may be waived by the Deputy Director or Chief Engineer under the following circumstances:

(1) In the case of an emergency;

(2) If finding that special circumstances exist so that prequalification is not necessary.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 1-2008(Temp), f. & cert. ef. 1-24-08 thru 7-22-08; HWD 4-2008, f. & cert. ef. 5-19-08

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Rule Caption: Vehicles or loads subject to variance permits, relating to lift axles.
Adm. Order No.: HWD 5-2008
Filed with Sec. of State: 5-19-2008
Certified to be Effective: 5-19-08
Notice Publication Date: 4-1-2008
Rules Amended: 734-074-0010, 734-082-0015, 734-082-0040
Subject: These rule amendments (1) clarify that a lift axle is not required to be deployed when the weight on a tire, an axle, tandem axle and group of axles are legal weight and the overall gross vehicle weight of the combination does not exceed the overall authorized weight; (2) remove a requirement that an auxiliary axle be

deployed if it is included in the specified axles required on a variance permit; (3) update revision dates to route maps issued with variance permits; and (4) clarify the hauling equipment that can be part of an unladen heavy haul combination and transported on the trailer of an unladen heavy haul combination under an annual variance permit within specified size limits over specified routes.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-074-0010
Vehicle Combinations Eligible for Permits

(1) The following vehicle combinations are eligible for permits issued under OAR 734, division 74 as long as they are in compliance with all applicable rules in OAR 734, division 74:

(a) Combinations of vehicles described in ORS Chapter 818 that meet the requirements of OAR 734-074-0005;

(b) Combinations of vehicles described in OAR 734, division 71;

(c) Combinations of vehicles described in OAR 734, division 73;

(d) Combinations of vehicles that include a dromedary truck-tractor having a dromedary box, plate or deck not exceeding 12-feet, 6-inches in length including any load overhang on the dromedary box, plate or deck, provided the overall length does not exceed that authorized by ORS Chapter 818, OAR 734, division 71 or division 73, whichever is appropriate for the combination of vehicles and the route of travel;

(e) A dromedary truck-tractor having a dromedary box, plate or deck not exceeding 17-feet, 6-inches in length including any load overhang on the dromedary box, plate or deck, towing one stinger-steered semitrailer which is not longer than 53 feet and having an overall length of not more than 75 feet and operating on Group 1 Highways established in OAR 734, division 71;

(f) A laden or unladen combination of vehicles designed and used exclusively to transport overseas marine containers that are enroute to or from a marine port or an intermodal transportation facility. Travel is authorized only on routes indicated in green on Route Map 7. Route Map 7, dated October 2006, is by reference made a part of division 74 rules. The semitrailer may not be longer than 53 feet, and overall length must be 105 feet or less. This combination of vehicles may consist of not more than one truck-tractor, one jeep, one overseas marine container trailer and one booster axle; and

(g) A combination of vehicles commonly known as triples, consisting of a motor truck and two self-supporting trailers, or a truck tractor and semitrailer drawing two self-supporting trailers or semitrailers mounted on dollies equipped with fifthwheels having an overall length not in excess of 105 feet. The self-supporting trailers must be reasonably uniform in length. A motor truck in this combination may not exceed 35 feet in overall length. This combination of vehicles may tow an unladen dolly used to transport a third load carrying semitrailer, provided the combination, including the dolly, does not exceed 85 feet.

(2) The maximum allowable overall lengths for vehicles described in subsections (1)(a) through (c) of this rule are as follows:

(a) For combinations of vehicles described under subsection (1)(a) of this rule, those lengths indicated in ORS Chapter 818 that comply with OAR 734-074-0005;

(b) For combinations of vehicles described under subsection (1)(b) of this rule, those lengths described in OAR 734, division 71; and

(c) For combinations of vehicles described under subsection (1)(c) of this rule, those lengths described in OAR 734, division 73.

(3) All combinations of vehicles operating under permits authorized by OAR 734, division 74 must have power units equipped with tandem drive axles, except:

(a) The power unit of triple combinations may be equipped with a single drive axle; and

(b) The power unit of double trailer combinations placed in service prior to April 1, 1983, may be equipped with a single drive axle.

(4) A lift or variable load axle(s) may be allowed. The following conditions apply:

(a) The controls for the lift axle may be mounted inside the cab of the power unit provided that it limits the axle movement to the complete up or complete down position;

(b) The control for a variable load, or lift axle, which allows adjustment to increase or decrease loading on the vehicle shall not be accessible from the cab;

(c) The lift or variable load axle must be deployed, and distribute the weight of the load, when failure to do so results in any tire, axle, tandem axle or group of axles exceeding the weight limits allowed by OAR 734-074-0020; and

(d) The lift axle assembly (including axles, tires, brakes) must be adequate to carry the weight of the load.

(5) When the weight difference between any trailer or semitrailer of a triple trailer combination is 1,500 pounds or more, the trailers shall be placed from the heaviest to the lightest, with the lightest trailer placed to the rear of the combination.

(6) Combinations of vehicles described as "triple trailers" shall have a visible and fully operable method of adjustment to eliminate slack in the hitch mechanism. The device used may be air chamber operated or it may be adjustable by a mechanical cam method.

[ED. NOTE: Maps referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619 & 818.220
Stats. Implemented: ORS 818.200 & 818.220
Hist.: 1 OTC 6-1980, f. & ef. 3-27-80; 2HD 6-1983, f. & ef. 2-18-83; HWY 6-1988, f. & cert. ef. 9-22-88; HWY 7-1992, f. & cert. ef. 3-27-92; HWY 12-1992, f. & cert. ef. 10-16-92; HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 2-2006, f. & cert. ef. 4-28-06; HWD 5-2008, f. & cert. ef. 5-19-08

734-082-0015
Weight For Single Non-Divisible Loads

(1) The loaded weight of a group of axles, vehicle, or combination of vehicles shall not exceed that specified in the Permit Weight Table assigned to the permit. In no case shall the loaded weight exceed:

(a) 21,500 pounds per axle, except as described in OAR 734-082-0010(2);

(b) 43,000 pounds per tandem axle;

(c) 98,000 pounds loaded weight for continuous trip permits;

(d) The weight otherwise specified on the permit; or

(e) The sum of the permittable axle, tandem axle, or group axle weight, whichever is less.

(2) Auxiliary axle(s) must be deployed, and distribute the weight of the load or vehicle, when failure to do so results in any tire, axle, tandem axle or group of axles exceeding the weight limits allowed by OAR 734-074-0020.

(3)(a) In a combination of two vehicles other than a truck-tractor and semitrailer, the axle and tandem axle weights listed in subsections (1)(a) and (b) of this rule may be allowed by permit for the towing vehicle or the towed vehicle, but not both, if the gross weight does not exceed that authorized in ORS 818.010 except;

(b) When the combination of vehicles is a motor truck and stinger-steered balance trailer, the axle and tandem axle weights listed in subsections (1)(a) and (b) of this rule may be allowed by permit for both vehicles if the load is carried on the balance trailer, and the towing vehicle is unladen.

(4) Overweight permits will be valid only for a single non-divisible load, except a permit may be issued for a single load consisting of multiple assembled parts constituting an integral whole with detached accessories included in the load, if the accessories are detached to reduce width, height, length, or a combination of these dimensions, and an overweight permit could have been issued for the load in its assembled condition.

(a) Single trip permits may be issued for combinations of vehicles having a steering axle followed by four or more consecutive tandem axles, provided the weight does not exceed:

(A) 600 pounds per inch of tire width;

(B) 24,000 pounds per axle, except as described in OAR 734-082-0010(2);

(C) 48,000 pounds per tandem axle;

(D) The weights listed in Permit Weight Table 5 for groups of axles; or

(E) The sum of the permittable axle, tandem axle, or group of axle weights, whichever is less.

(b) Additional weight for axles and/or tandem axles may be allowed by permit when the combination of vehicles described in subsection (a) of this section for axles having four tires and are ten feet wide (10 percent), or for axles having eight tires and are ten feet wide (25 percent). This additional weight must be specified on the permit, and applies only to axles or tandem axles. The weight for groups of axles remains the same.

(c) Permits issued under this section are subject to special routing and analysis by the Department of Transportation.

(d) All movements shall be subject to any posted weight limitation in effect on any highway, highway section, bridge, or structure.

(e) Equipment used in the loading, unloading or operation of the vehicle may be transported with the permitted item.

(5) The road use assessment fee required in OAR 734-082-0003 is based on the weight requested for the permit. The weight shown on the permit is the maximum weight permitted.

(6) The Department of Transportation may publish tables of weights that may be authorized by these rules, subject to route analysis for each trip.

(7) In no instance may the vehicle combination exceed the manufacturer's GVWR for the vehicle or the vehicle combination and load.

(8) The exception described in ORS 818.030(10) and 818.340(4) is limited to the actual weight of the idle reduction system, not to exceed 400 pounds. In order to qualify for the exception, the operator of the vehicle may be required to prove:

(a) By written certification the weight of the auxiliary power unit; and

(b) By demonstration or certification that the idle reduction technology is fully functional.

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

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.220 & 818.225

Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1992, f. & cert. ef. 2-18-92; TO 7-1998, f. & cert. ef. 8-20-98; TO 8-2002, f. & cert. ef. 10-14-02; HWD 6-2007, f. & cert. ef. 10-17-07; HWD 5-2008, f. & cert. ef. 5-19-08

734-082-0040

Combination of Vehicles

(1) The following vehicles or combinations of vehicles may be authorized for continuous trip permits over authorized routes provided the width does not exceed 14 feet, the height does not exceed 14 feet, and the overall length does not exceed that stated below:

(a) A solo vehicle shall not exceed 40 feet and vehicle inclusive of load shall not exceed 50 feet in overall length.

(b) Truck-tractor and semitrailer combinations, which may include an auxiliary axle, shall not exceed the length limits as shown on the reverse of Group Map 1 or Route Map 7, whichever is greater, and the semitrailer shall not exceed 53 feet in length including the auxiliary axle. An auxiliary axle attached to the rear of a trailer shall be included in the measurement of the trailer unless the combination measurement exceeds 53 feet. Group Map 1, dated January 2008, and Route Map 7, dated October 2006, available from the Over-Dimensional Permit Unit, are by reference made a part of Division 82 rules.

(c) Motor truck and trailer shall not exceed 75 feet in overall length.

(d) Truck-tractor with semitrailer and trailer combinations shall not exceed the length limits shown on the reverse of Group Map 1 or Route Map 7, whichever is greater.

(e) Passenger or light vehicles towing any trailer shall not exceed 70 feet in overall length.

(f) An unladen combination of vehicles used to transport non-divisible loads may consist of the truck-tractor, jeep axle(s), a trailer, booster axle(s), dolly(s), steering axle(s) and other equipment needed to transport the non-divisible load. Trailer length shall not exceed 62 feet. The combination must be reduced to the shortest length practicable; however overall length shall not exceed 105 feet. Unladen movement is authorized with equipment needed to legally transport the non-divisible load loaded on the trailer.

(g) A combination consisting of a truck-tractor or toter towing a manufactured home, mobile home or modular building unit chassis, which may include axles and tires attached to each chassis hauled, may operate on a 30-day multiple trip permit under the following conditions:

(A) Chassis length inclusive of tongue shall not exceed 75 feet;

(B) The chassis shall not be loaded end to end but may be staggered lengthwise for transport;

(C) Overhang shall not extend more than five feet off the rear of the chassis transporting the load;

(D) Overall length of the combination shall not exceed:

(i) 105 feet on interstate and multilane highways; and

(ii) 95 feet on two-lane green and brown routes shown on Route Map 7; and

(E) The chassis transporting the load shall be equipped with brakes and lights that meet the requirements of CFR 49 Part 393.

(2) When the combination of vehicles includes jeep axles, or other vehicles of a size or weight not authorized by section (1) of this rule, movement shall be by single trip permit only.

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

Stats. Implemented: ORS 818.220 & 818.225

Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1991(Temp), f. & cert. ef. 8-23-91; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 11-1992, f. & cert. ef. 9-16-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 4-2007, f. & cert. ef. 7-19-07; HWD 5-2008, f. & cert. ef. 5-19-08

Economic and Community Development Department
Chapter 123

Rule Caption: Amend rules related to ad hoc committees, as well as clarifying contested case proceedings language.
Adm. Order No.: EDD 15-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-4-08
Notice Publication Date: 5-1-2008
Rules Amended: 123-001-0050, 123-001-0300, 123-001-0500, 123-001-0520, 123-001-0700, 123-001-0725, 123-001-0750
Subject: The proposed administrative rule change addresses the statutory changes implemented in SB 350 (2007 Legislature) regarding the Oregon Economic Development Commission and advisory committees under its charge, as well as making technical correction regarding the Finance Committee to reflect current practice. In addition, the proposed rule clarifies the language regarding contested case proceedings for rejected applications for certain programs.
Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-001-0050

Definitions

For purposes of this division of administrative rules, and generally throughout this chapter of administrative rules, unless the context demands otherwise:

(1) **Commission** means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(2) **Department** means the State of Oregon Economic and Community Development Department as established under ORS 285A.070.

(3) **Director** means the director of the Department as appointed under ORS 285A.070.

(4) **Governor** means the sitting Governor of the State of Oregon, pursuant to Article V of the Constitution of Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A, 285B, OL 1999, Ch. 509

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0300

Waivers of Provisions Provided by Rule in This Chapter

The Director or the Director's designee may formally waive requirements otherwise prescribed by this chapter of administrative rules, if such a waiver serves to further the goals and objectives of ORS chapters 285A, 285B and 285C and results in sound economic development or job creation in the state, such that:

(1) The requirement must be an invention of the administrative rule itself, and not arise from policies established by the Commission or from any state or federal law, including cases where state law might in some way be ambiguous, but the administrative rule is considered to correctly and optimally clarify or interpret that law;

(2) This rule applies whether or not the division of administrative rule similarly provides for waiver by the Director; and

(3) This rule does not interfere with other ways to make exceptions or to provide flexibility, as described elsewhere for certain administrative rules, and it is not meant to substitute for the timely amendment of administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A & 285B

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0500

Commission Committees

For purposes of advisory and technical committees for the Commission:

(1) These committees are different from, and this rule does not apply to, statutory boards or commissions affiliated with the Department, but whose appointment, authority, duties and relationship to the Commission, if any, are prescribed (such as the Oregon Arts Commission under ORS 359.010 to 359.137) by the Legislative Assembly.

(2) The committees under this rule, which are part of the Department and are public bodies as subsidiaries to the Commission, consist of Ad Hoc Committees established solely by authority of the Commission and operating at its discretion under ORS 285A.060.

(3) An Ad Hoc Committee ("it" for purposes of this section), as defined in subsection (2) of this rule, is subject to the following parameters:

(a) The Commission must create it by a formal and public action for a certain definite period, or otherwise it may exist and operate until the Commission terminates or suspends it;

(b) The chair of the Commission is primarily responsible for appointing each of its members, which serve at the chair's pleasure (the Director or designee is always an ex officio member), and for determining its makeup and similarly fundamental attributes;

(c) Its membership shall broadly reflect the different geographic regions of this state, and at least one of its members shall reside east of the Cascade Range;

(d) It shall provide advice and recommendations to the Commission or the Department, although it may exercise, on a day-to-day basis, such duties or powers as the Commission delegates to it;

(e) It is subject to the Commission's review and to reporting its decisions, actions and agenda for future meetings, which any member of the Commission may attend;

(f) It may adopt standards and procedures for its activities, with or without direction from the Commission; and

(g) Regardless of anything described in this chapter of administrative rules, the Commission reserves the discretion to change any delegation and directive related to its future functions, at any time.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.060
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0520
Finance Committee for the Commission

The **Finance Committee** is an Ad Hoc Committee that has been formed and empowered by the Commission in accordance with OAR 123-001-0500, such that:

(1) The Commission charges the Finance Committee (pursuant to divisions of this chapter of administrative rules) with the following:

(a) Immediate oversight and the approval of projects and proposals under the following business finance programs:

(A) Economic Development Revenue Bonds (Division 011); and

(B) Oregon Business Development Fund (Division 017);

(b) Consideration on appeal of administrative denials of business loans under the following programs:

(A) Entrepreneurial Development Loan Fund (Division 019); and

(B) Credit Enhancement Fund (Division 021); and

(c) Immediate oversight and the approval of projects and proposals and of agreements with port districts under the Port Revolving Loan Fund (Division 030).

(2) The Finance Committee's members:

(a) Are appointed by the chair of the Commission to include representation from among this state's banking and financial community, as well as at least one member possessing general experience with a traded-sector industry or industry association; and

(b) Serve indefinite terms at the pleasure of the Commission's chair, such that a newly appointed Commission chair assumes the makeup and organization of the current Finance Committee until the Commission chair initiates changes.

(3) The Commission's chair shall select a chairperson for the Finance Committee, such that:

(a) The chairperson shall call meetings and set agendas for the Finance Committee with the assistance of Department staff; and

(b) A member chosen by the chairperson (or otherwise, the longest-serving member present) shall preside over a Finance Committee meeting at which the chairperson is absent.

(4) The supervisor of the Department's business finance programs shall administer the operations of the Finance Committee, officially carry out its decisions, prepare business for its consideration with the chairperson's consent, and serve as an ex officio member on behalf of the Director.

(5) Nothing in this rule, or elsewhere in this chapter of administrative rules, interferes with the Commission's authority to dissolve the Finance Committee or to redirect its future procedures and purposes.

Stat. Auth.: ORS 285A.075, 285B.056, 285B.206(3) & 285B.743(2)
Stats. Implemented: ORS 285A.060, 285A.666 - 285A.732, 285B.050 - 285B.098, 285B.200 - 285B.218, 285B.320 - 285B.371 & 285B.740 - 285B.758
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0700
Purpose, Scope and Definitions

(1) OAR 123-001-0700 to 123-001-0799 establish procedural steps and options for handling appeals, in the manner of a contested case under ORS 183.310 to 183.550, when the Department denies:

(a) An application for either preliminary certification or annual certification to exempt the taxable income of a facility under ORS 316.778 or 317.391 (Division 155 of this chapter of administrative rules), other than when denial results from objection to preliminary certification by the city, county or port; or

(b) Any other application or request for which state law provides for appeal by contested case.

(2) Except as otherwise provided under state law or elsewhere in this chapter of administrative rules, this rule and contested case provisions do not pertain to any other proceeding, hearing, determination or decision by the Department, Director, Commission or any subsidiary body.

(3) OAR 123-001-0700 to 123-001-0799 are intended only to supplement mandatory elements of contested case proceedings under the Administrative Procedures Act for matters specific to the Department. Therefore, OAR 137-003-0501 to 137-003-0700 are incorporated into and adopted as part of this division of administrative rules, by reference.

(4) For purposes of OAR 123-001-0700 to 123-001-0799, unless the context demands otherwise:

(a) "Applicant" means the person (including but not limited to a business firm) that sought approval under section (1) of this rule, as identified in the application form or other submitted materials. This person is thus the affected party or appellant for purposes of the contested case, and the submitted address given in the form is assumed correct for mailing the Notice.

(b) "Notice" means the formal written statement on Department letterhead that the Department initially sends to the Applicant, in accordance with OAR 123-001-0725.

Stat. Auth.: ORS 183.341(2), 183.464(2), 285A.075; OL 2007 Ch. 288, §4(2)
Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0725
Steps and Reservations of the Department

(1) As described in OAR 123-001-0700, the Department shall send Notice to the Applicant, such that:

(a) The Department sends Notice by registered or certified mail;

(b) If a copy is sent also by regular, first-class mail, it must be so mailed at least five days prior to the Notice as described in subsection (a) of this section; and

(c) The Department shall also furnish a copy to the Department of Revenue/county assessor as appropriate.

(2) The Notice, on Department letterhead, shall include but is not limited to the following:

(a) The date and other pertinent facts of the Department's receipt of the application;

(b) Brief explanation of why the Department is unable to approve it;

(c) Reference to the specifically relevant statutory subsection(s) or administrative rule section(s), and further explanation, as warranted, regarding how these references support the Department's conclusion(s);

(d) Statement of the Applicant's right to a contested case hearing on the matter before an administrative law judge and to be represented by legal counsel;

(e) Designation of the Department's current file on the application as the record for purposes of proving a prima facie case upon default; and

(f) Instruction on how the Applicant must file a written request in order to receive the hearing, such that the request is received by the Department on or before a specified date not less than 30 calendar days after the Notice.

(3) The Department reserves the option (at its sole discretion) to withdraw the proposed denial and grant certification to the Applicant for any reason, prior to a final order, including but not limited to the re-submission of a new application or the consideration of evidence that alters the Department's prior conclusion(s), as otherwise allowed under the applicable laws.

(4) Upon default by the Applicant, including but not limited to failure to timely file a request for a hearing with the Department, the Department shall promptly issue a final order denying certification, furnishing a copy to the Department of Revenue/county assessor as appropriate.

(5) If the Applicant files a timely request for a contested case hearing, the case shall be referred to the Office of Administrative Hearings and a

copy of the referral furnished to the Applicant, General Counsel and the Department of Revenue/county assessor as appropriate.

(6) The administrative law judge will issue a proposed order, pursuant to applicable proceedings of the contested case hearing, and except as set forth in subsection (7)(a) or (b) of this rule, that proposed order shall become final by order of the administrative law judge not less than 45 calendar days after the issuance of the proposed order.

(7) A proposed order in section (6) of this rule shall not become final if:

(a) The Department gives timely written notification to the parties and the administrative law judge of its intent to alter the findings or effect of the order, subsequent to which it shall issue an amended proposed order and/or final order, as warranted.

(b) Within 30 calendar days from issuance of the proposed order, a party files written exceptions with both the Department and the administrative law judge that concisely present the party's entire argument against the proposed order, and the Department subsequently requests in writing that the administrative law judge undertake further steps. Such steps include, but are not limited to, an official response to the exceptions or the hearing of new or additional evidence.

Stat. Auth.: ORS 183.341(2), 183.464(2) & 285A.075; OL 2007 Ch. 288, §4(2)
Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

123-001-0750
Representations by Agency Representative

For purposes of any contested case hearing before an administrative law judge:

(1) Subject to the approval of the office of Attorney General of the State of Oregon under ORS chapter 180, the Director may authorize an officer or employee of the Department to appear on behalf of the Department.

(2) Such a Department representative may not present legal argument on behalf of state government.

(3) The Department retains its full prerogative, with or without intervention by the administrative law judge, to consult with or otherwise involve the office of Attorney General. Such prerogative includes but not necessarily limited to the sole purpose of having the office of Attorney General present legal argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(4)(a) "Legal argument" includes arguments on:

(A) The jurisdiction to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures followed in the contested case hearing.

Stat. Auth.: ORS 183.452(2) & 285B.075
Stats. Implemented: ORS 183.452; OL 2007, Ch. 116, §2
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

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Rule Caption: Bring rules into compliance with SB 350 from the 2007 Legislative Session.
Adm. Order No.: EDD 16-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-4-08
Notice Publication Date: 5-1-2008
Rules Amended: 123-009-0060, 123-009-0080, 123-009-0090
Subject: The proposed amendments to administrative rule address the statutory changes in SB 350 (2007 Legislature) regarding the Community Development Fund. The amendments also remove reference to the OECD Commission establishing initial, biennial targets for allocation of the fund. This proposed change is consistent with the statutory direction established in SB 350, to provide the Commission and Department with the flexibility necessary to implement programs and policies in the most effective manner possible to advance Oregon's economy. Furthermore, the OECD Commission was not bound by these preliminary targets, and the practice ultimately proved to be an inefficient use of time and resources.
Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-009-0060
Definitions

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Fund" means the Oregon Community Development Fund established in ORS 285A.227, which includes lottery funding for grant and loan programs and contracted services and all interest earnings that accrue to the Fund.

(2) "Commission" means the nine member Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(3) "Director" means the Director of the Oregon Economic and Community Development Department established in ORS 285A.070.

(4) "Allocation Plan" means the distribution plan of the legislatively authorized Community Development Fund biennial budget.

Stat. Auth.: ORS 285A.075, 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08

123-009-0080
Commission Responsibilities

(1) The Commission shall review and approve a biennial Allocation Plan for the Fund.

(2) The Commission shall be responsible for making allocations from the Fund and may adjust these allocations based on need. In the event of lottery revenue shortfalls, the Commission may adjust allocations in accordance with any Legislative direction and recommendations of the Commission.

Stat. Auth.: ORS 285A.075, 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08

123-009-0090
Criteria for Allocations

The Commission shall make biennial allocations from the Fund based on the following criteria:

(1) Funding shall be based on the principles established in ORS 285A.020.

(2) Allocations from the Fund shall be used to enhance coordination among internal and external programs, contractors and other organizations.

(3) Funds may be reserved and allocated to address opportunity-driven investments, projects and unanticipated needs.

(4) Consideration may be given to eliminating or combining funding for programs in allocations.

Stat. Auth.: ORS 285A.075, 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08

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Rule Caption: Conform the Port Planning and Marketing Fund (Div. 25) rules to the provisions of SB 350 (2007 Legislature).
Adm. Order No.: EDD 17-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-4-08
Notice Publication Date: 5-1-2008
Rules Amended: 123-025-0010, 123-025-0012, 123-025-0015, 123-025-0017, 123-025-0021, 123-025-0023, 123-025-0025, 123-025-0030
Subject: The permanent rule implements the statutory changes implemented in SB 350 (2007 Legislature) regarding the Port Planning and Marketing Fund by clarifying a port project and the application process, as well as clarifying the definition of a Peer Review Committee and changing the amount of grant monies eligible for

award. In addition, the proposed changes better define the requirements of the funding process.
Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-025-0010
Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the context clearly indicates otherwise:

(1) "Commission" means the nine-member Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(2) "Department" means the State of Oregon Economic and Community Development Department.

(3)"Director" means the Director of the Department.

(4) "Fund" means Port Planning and Marketing Fund.

(5) "Peer Review Committee" means a committee of Oregon port representatives, as determined by the department. The Peer Review Committee shall:

(a) Recommend standards and priorities for typical Port Planning and Marketing Fund projects;

(b) Review and evaluate Port Planning and Marketing Fund proposals submitted to the department for possible funding; and

(c) Review and evaluate project deliverables as described in the grant contract prior to disbursal of final payment.

(6) "Port" means a municipal corporation organized under ORS chapter 777 or 778, which may be known as a "port authority" or "port district."

(7) "Project" means any activity that is eligible for assistance from the Port Planning and Marketing Fund.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

123-025-0012
Annual Funding of Program

The Department will transfer up to 5.00% of the assets of the Port Revolving Fund, not to exceed the annual accrued net income from the Port Revolving Fund into the Port Planning and Marketing Fund annually as calculated on receipt of the Fund Audit each year.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

123-025-0015
Project Eligibility and Criteria, Strategic Business Plans Requirement

(1) A planning or marketing project that meets the following criteria is eligible for assistance from the fund:

(a) The project is necessary for improving a port's capability to carry out its authorized functions and activities relating to trade and commerce;

(b) The project is feasible and will produce measurable results;

(c) The project will promote the long-term economic self-sufficiency of the port and will encourage cost-effective investments guided by prudent financial consideration and review;

(d) The project has a single focus and does not attempt to accomplish multiple disjointedor unrelated outcomes or tasks;

(e) The applicant has met the strategic planning requirements in 123-025-0015(2) and;

(f) The project meets the standards and criteria as set by the department and Peer Review Committee in this division of administrative rules.

(2) Those Ports formed under ORS 777 shall develop and maintain strategic business plans before obtaining department funding for other projects. This requirement will be phased in over several years. Ports must have a formally adopted strategic business plan, approved by the department, in place one year after the adoption of a Statewide Ports Strategic Business Plan by the Oregon Economic and Community Development Commission as a condition of obtaining financial assistance from the department. The strategic business plans required under this rule shall be updated at least every 5 years.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; Suspended by EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

123-025-0017
Application Submittal, Review and Approval

(1) An eligible port may submit an application after consulting with the department on a preliminary determination of eligibility and otherwise follow the department's procedures for submitting applications. The application must be in the form provided by the department and must contain or be accompanied by such information as the department may require. The department will process only completed applications.

(2) Upon receipt of a completed application the department will apply the following criteria to determine the project's eligibility:

(a) The project is cited in or conforms to a port's adopted strategic business plan required under OAR 123-025-0015(2) and approved by the department and the Peer Review Committee.

(b) The project is not an unnecessary duplication of marketing efforts among ports. However it is recognized that regional or cooperative projects may require ports to simultaneously perform similar tasks;

(c) The project does not subsidize regular port operating expenses;

(d) The project will not require or rely upon continuing subsidies from the department;

(e) Financial need may be a consideration when reviewing a project proposal for funding; and,

(f) The requirements set out in OAR 123-025 are met.

(3) Upon receipt of a signed application the department will within 14 days notify the port as to the status of the application and advise the port of any missing materials or incomplete application detail.

(4) Once an application is considered complete the department will, within 60 days approve or reject the application.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

123-025-0021
Project Funding Priorities

(1) At the beginning of each state fiscal year the Department and the Ports will make reasonable efforts to identify and initiate high priority projects. Funding of up to 50% of that year's transfer of funds will be reserved exclusively for high priority projects for the first four months of the state fiscal year, after which it will become available for any eligible project.

(2) Projects to develop or update the strategic business plans as required under OAR 123-025-0014(2), or port marketing or financial plans, undertaken before the provisions of ORS 123-025-0015(2), will be given the highest priority.

(3) Other high priority projects are:

(a) Regional or cooperative projects that benefit more than one port;

(b) Projects that leverage other marketing and development efforts by the state or other government units;

(c) Projects leading to economic diversification, development of a new or emerging industry or redevelopment of existing public facilities.

(d) Priority will, however, be given for immediate job or revenue creation projects or other opportunities not cited in a port's adopted strategic business plan provided that the port consults with the department and the Peer Review Committee and, if required to do so by the department, the ruling body of the port acts to amend its strategic business plan.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

123-025-0023
Grant Awards and Match

(1) The maximum grant is $50,000 or 75% of the total project cost, whichever is less.

(2) Grants will be awarded only when there are sufficient funds available in the fund.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

123-025-0025
Project Administration

(1) The department and the port must execute a grant contract prior to disbursal of grant funds.

(2) Documentation of project costs incurred by a port must be submitted to the department prior to disbursal of funds.

(3) Disbursal of grant funds to a port will not exceed one disbursal per month. Ten percent of the grant funds will be withheld until the Peer Review Committee reviews and recommends approval of the appropriate grant contract deliverables of the project.

(4) Upon request the port must provide the department with a copy of documents, studies, reports, and materials developed during the project, including written report on activities or results of the project, or any other information that may reasonably be requested by the department.

(5) Prior to final disbursement, the Peer Review Committee will review all documents produced as a result of the project. The committee will evaluate and make recommendations to the department on value of resulting document(s) and how closely the project delivered the outcome anticipated in the application.

(6) Any monies disbursed but not used for an approved project, must be returned to the department.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

123-025-0030
Sanctions, Exceptions and Appeals

(1) The department may invoke sanctions against ports that fail to comply with the requirements governing the fund. Sanctions will not be imposed by the department until the port has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) State statutory requirements have not been met; or

(b) There is a significant deviation from the contract; or

(c) The department finds that significant corrective actions are necessary to protect the integrity of the project funds.

(2) One or more of the following sanctions may be imposed by the department:

(a) Bar a port from applying for future assistance;

(b) Revoke an existing award;

(c) Withhold unexpended funds;

(d) Require the return of unexpended funds or repayment of expended funds;

(e) Withhold other state funds such as state-shared revenues; and

(f) Other remedies as described in the grant contract.

(3) The remedies set forth in this rule are cumulative, not exclusive, and in addition to any other rights and remedies provided by law or under contract.

(4) Appeals of local government decisions regarding a project must be made at the local level.

(5) The director will consider appeals of the department's funding decisions. Only the port may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. An application that would have been funded but for technical error in the department's review will be funded as soon as sufficient funds become available, provided the project is still viable. The director's decision is final.

(6) The director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

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Rule Caption: Conform the Brownsfield rules (Div. 135) to the provisions of SB 350 (2007 Legislature).
Adm. Order No.: EDD 18-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-4-08
Notice Publication Date: 5-1-2008
Rules Amended: 123-135-0020, 123-135-0070
Subject: The permanent rule implements the statutory changes implemented in SB 350 (2007 Legislature) regarding the Brownsfields by clarifying the definition of environmental action, as well as changing the limitation of funding to the liable parties to 60%.
Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-135-0020
Definitions

As used in this division, the following terms shall have the following meaning unless otherwise indicated:

(1) "Applicant" means any person, combination of persons, non-profit, or municipality applying for financial assistance from the Brownfields Redevelopment Fund;

(2) "Bridge Loan" means a loan that will be repaid in full at the end of a short-term, twelve (12) to twenty four (24) months, following loan closing;

(3) "Brownfield" means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1);

(4) "Capacity Building" means evaluating, cleaning up, or otherwise preparing a site without an identified redevelopment use to meet the buildable lands needs of a municipality;

(5) "Collateral" means property subject to a security interest or security agreement as defined in ORS 79.1050;

(6) "Commission" means the Oregon Economic and Community Development Commission;

(7) "Contribution" means cash, a reduction in land sale price, a donation of real property or personal services of value; or some other like act that offsets the benefit of receiving sums from the Fund that are conveyed on a recipient or site owner who is a potentially responsible party for a release of a hazardous substance or is potentially liable for the cost of cleanup at the site according to ORS 465.255;

(8) "Department" means the Oregon Economic and Community Development Department;

(9) "Environmental Action" means activities undertaken to:

(a) Determine if a release has occurred, if the release, or potential release,poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and afeasibility study;

(c) Plan for remedial action or removal action; or

(d) Conduct a remedial action or removal action at a site.

(10) "Environmental Insurance" means a specific form of casualty insurance based on industry custom standards. Policies such as, but not limited to, cleanup cost caps, secured creditor on impaired property, or pollution legal liability are examples of environmental insurance;

(11) "Environmental Justice" means community based issues, concerns, or problems resulting from the disparate effects caused by the placement and/or proximity of facilities that negatively impact minority or low-income populations;

(12) "Environmental Service Professional" means an entity that has the necessary experience, capacity, expertise, or is otherwise certified to conduct environmental actions;

(13) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel. Facility has the meaning given in ORS 465.200;

(14) "Financial Institution" means any commercial bank, mutual savings bank, savings and loan association, credit union, insurance company, investment bank, certified development corporation or National Association of Securities Dealers (NASD) securities underwriter licensed or authorized to do business in Oregon;

(15) "Fund" means the Brownfields Redevelopment Fund;

(16) "Grant" means awards from the Fund to a Recipient to reimburse or pay eligible project expenses. When there is otherwise no specific reference to Cash Grant, or Conditional Grant the reference shall include all Grant types.

(a) "Cash Grant" means awards from the Fund that are available to pay eligible project costs;

(b) "Conditional Grant" means awards from the Fund that are repaid only as conditions allow;

(17) "Hazardous Substance" has the meaning given in ORS 465.200;

(18) "Institutional Controls" has the meaning given in ORS 465.315 and OAR 340-122-0115(32);

(19) "Loan" means debt financing offered through the Fund. The Fund has two types of loans, bridge loan and term loan;

(20) "Municipality" means any city, county, municipal corporation or quasi-municipal corporation, special district, port, or federally recognized tribe;

(21) "Non-Profit" means an organization certified under sections 501(c)(2) through (4) and (6) through (8) and (10) of the Internal Revenue Code;

(22) "Person" means any individual, association of individuals, company, joint venture, partnership, or corporation;

(23) "Project" and "Project Description" means the resulting combination of the site, the proposed activities to be performed, the proposed or likely redevelopment use, and any other information stated in the Fund application;

(24) "Prospective Purchaser Program" refers to ORS 465.327 and associated administrative rules;

(25) "Recipient" means the person, non-profit, or municipality receiving a disbursement of sums from the Fund;

(26) "Release" (as in release of a hazardous substance) has the meaning given in ORS 465.200;

(27) "Scope of Work" means a detailed plan to perform in part or in whole an environmental action. Scopes of work shall be drafted by an environmental service professional;

(28) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(29) "Site Characterization" means determining and delineating the boundaries of the plume(s) of contamination and/or determining the status of the contamination such as whether it is migrating or crossing from one media to another, such as from soil to water, at the site. This review provides a level of detail comparable to a "preliminary assessment" (PA) as described in OAR 340-122-0072 and may be comparable to a "Phase II Environmental Site Assessment" under ASTM Standard E 1903;

(30) "Site Investigation" means a historic use investigation of the site involving, but not limited to, the analysis of aerial photos, public and private records, personal interviews, and other documents and data sources to determine the likelihood of a release of a hazardous substance at the site or facility. This review provides a level of detail comparable to a "Phase I" review under ASTM Standards E1527 and 1528 and is often a desktop review without any sampling;

(31) "Site Sampling" means systematically obtaining and analyzing representative samples from the site of relevant media such as soil and water to determine the presence of and/or the concentration of the contamination and/or identify the specific substances or compounds comprising the contamination. Sampling is a critical component of the "preliminary assessment" (PA) conducted under OAR 340-122-0072 or the ASTM "Phase II" under E-1903;

(32) "Substantial Public Benefit" includes, but is not limited to:

(a) The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with OAR chapter 123, division 135;

(b) A commitment to perform substantial remedial measures at the facility in accordance with OAR chapter 123, division 135;

(c) Productive reuse of a vacant or abandoned industrial or commercial facility; or

(d) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose. Substantial Public Benefit has the meaning given in ORS 465.327(1)(d);

(e) Other meanings listed in the Fund's Program Guidelines;

(33) "Term Loan" means a loan to be paid over a period of years, usually ten (10) to fifteen (15), with a rate of interest;

(34) "Voluntary Cleanup Program" relates to ORS 465.325 and associated administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 3-2007(Temp), f. & cert. ef. 8-10-07 thru 2-5-08; Administrative correction 2-22-08; EDD 18-2008, f. & cert. ef. 6-4-08

123-135-0070
Application Approval

(1) When evaluating an application, the Department shall consider the following:

(a) The extent to which real or perceived contamination prevents the property from being fully utilized;

(b) The need for providing public assistance, after considering the difficulty of obtaining financing from other sources or of obtaining financing at reasonable rates and terms;

(c) The degree to which redevelopment of the property provides opportunity for achieving protection of human health or the environment by reducing or eliminating the contamination of the property and for contributing to the economic health and diversity of the area;

(d) The probability of the success of the intended use or the degree to which redevelopment of the property provides a public purpose following remediation of the property;

(e) Compliance with the land use plan of the local government with jurisdiction over the property;

(f) Endorsement from the local government with jurisdiction over the property; and

(g) Other criteria described in the Fund's Program Guidelines.

(2) Applications are received on a first come, first served basis. In the event of a shortage of funds, priority will be given to projects that meet one or more of the following:

(a) The site is located in a distressed area as defined by OAR chapter 123, division 24;

(b) The site is located within a state or federal empowerment or enterprise zone or community or otherwise designated under those programs;

(c) The site is enrolled in the Department of Environmental Quality's Voluntary Cleanup Program, Prospective Purchaser Program, Independent Cleanup Pathway, Site Response Section, or any other program that demonstrates active involvement or oversight by that agency;

(d) The site is located in or is participating in any Environmental Protection Agency brownfields initiative including, but not limited to: Brownfield Assessment Grants, Supplemental Pilots, Targeted Brownfield Assessments, Cleanup Grants, or Brownfields Cleanup Revolving Loan Fund;

(e) The project will likely create above average income jobs in the manufacturing or traded sectors;

(f) The project will assist in the resolution of environmental justice concerns of the local community;

(g) The project has significant community involvement and participation;

(h) The project will result in a substantial public benefit;

(i) The project includes or is relatively certain to leverage other public or private funding; or

(j) Other criteria described in the Fund's Program Guidelines.

(3) The Department may conditionally approve funding of an application. Possible conditions include, but are not limited to:

(a) Requiring collateral or other security;

(b) Requiring a co-signer or guarantor;

(c) Enrolling in a Department of Environmental Quality oversight program or obtaining scope of work review from that agency;

(d) Obtaining an environmental insurance policy;

(e) Requiring some event to occur such as, but not limited to, a transfer of ownership of the site or approval of other funding; or

(f) Other conditions described in the Fund's Program Guidelines.

(4) If application approval is conditioned, the conditions will become part of the award contract. If appropriate, the Department may require the recipient to demonstrate or document how the conditions have or will be met before funds are disbursed in whole or in part.

(5) Complete applications will be reviewed by the Department for credit worthiness according to prudent lending practices.

(6) When making a grant to a municipality, the Department shall give priority to municipalities that provide matching funds from a loan under OAR chapter 123, division 135, from another source or from both.

(7) When making a grant to an entity that is not a municipality, the department shall require that:

(a) The recipient is not liable for the subject property under ORS 465.255, is a qualified non-profit organization, or has a valid Prospective Purchaser Agreement under ORS 465.327;

(b) The environmental action provides a substantial public benefit; and

(c) The recipient provides matching funds from a loan under OAR chapter 123, division 135, from another source or from both.

(8) The Department may request additional information from the applicant to facilitate a funding decision.

(9) The Department shall make a funding decision on a complete application in a timely manner.

(10) No more than sixtypercent (60%) of the total amount of the Fund in any biennium shall be awarded to persons who are liable with respect to the site under ORS 465.200. The sixty percent (60%) limitation will be calculated at the beginning of each biennium following, if applicable, the funding allocation to the Fund by the Commission. The limitation will be

sixty percent (60%) of the total, non-obligated, funds available after the Commission allocation. Only awards to recipients that caused or contributed to the contamination at a site shall be included in the sixty percent (60%) calculation.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.185 & 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 8-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 3-2007(Temp), f. & cert. ef. 8-10-07 thru 2-5-08; Administrative correction 2-22-08; EDD 18-2008, f. & cert. ef. 6-4-08

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Rule Caption: Bring current rules into compliance with SB 350 from the 2007 Legislative session.
Adm. Order No.: EDD 19-2008(Temp)
Filed with Sec. of State: 6-9-2008
Certified to be Effective: 6-10-08 thru 11-15-08
Notice Publication Date:
Rules Adopted: 123-016-0075, 123-016-0076
Rules Amended: 123-016-0000, 123-016-0010, 123-016-0020, 123-016-0030, 123-016-0040, 123-016-0050, 123-016-0060, 123-016-0070, 123-016-0080, 123-016-0090, 123-016-0100
Subject: Rules provide compliance with changes from 2007 Legislative Session, Senate Bill 350. Additional language added regarding the eligibility of the Business Retention Fund to be used for business transition plans and business restructuring plans. Definitions have also been clarified.
Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-016-0000
Purpose

The purpose of these rules is to provide procedures, standards and criteria for feasibility studies, technical assistance, transition plans, restructuring plans, and management consulting services from the Business Retention Fund.

Stat. Auth: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0010
Definitions

For the purposes of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Applicant" means any county, municipality, local development group, worker group, non-profit corporation, or person requesting the Commission to expend funds from the Business Retention Fund.

(2) "Local Development Group" means any public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

(3) "Municipality" means any city, municipal corporation, or quasi-municipal corporation, including a port district.

(4) "Person" means any individual, association of individuals, joint venture, partnership or corporation that is a business firm in transition or is a troubled industrial facility.

(5) "Commission" means the Economic and Community Development Commission.

(6) "Department" means the Economic and Community Development Department.

(7) "Fund" means the Business Retention Fund.

(8) "Director" means the Director of the Economic Community Development Department.

(9) "Facility" refers to an industrial plant in a given location in Oregon without reference to the location of the parent corporation or other operations owned by the same parent company.

(10) "Technical assistance and management consulting" means providing experts and qualified persons to private firms to assist managers and/or owners identify and solve problems that may lead to a major layoff or closure of the company. The problems to be addressed may include (but are not limited to) management improvements, marketing problems, financial problems, equipment needs, productivity improvements, production control, cost and pricing systems, and/or ownership.

(11) "Feasibility study" means a study conducted to analyze the feasibility of reopening, keeping open, or converting a business firm in transition or troubled industrial facility to another product, market or ownership structure.

(12) "A troubled industrial facility" refers to an existing Oregon facility which has declining profits, declining sales and/or declining employment and/or an erosion of working capital which could lead to major layoffs or a plant closing. The facility must be involved in one or more of the following activities:

(a) Manufacturing or other industrial production;

(b) Agriculture development or food processing;

(c) Aquaculture development or seafood processing;

(d) Wood products processing;

(e) Mining or minerals processing.

(13) "Conversion" includes conversion of the facility to a new product, or market, or the conversion of a company's ownership structure, including an employee buy out.

(14) "Transition plan" means strategic and business plans to grow or alter a business operation in ways that sustain local economies in Oregon. Plans may be for company growth, mergers, transition to local owners, or other processes focused on retaining the viable operation of an existing business in Oregon.

(15) "Restructuring plan" includes planning for the acquisition of new equipment, technologies, management practices, sourcing solutions, and growth options focused on retaining the viable operation of an existing business in Oregon.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 4-1998(Temp), f. & cert. ef. 3-6-98 thru 7-24-98; Administrative correction 8-5-99; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0020
Eligibility for Technical Assistance and Management Consulting

(1) Eligible projects are technical assistance and management consulting services as defined in OAR 123-016-0010.

(2) Eligible applicants are business firms in transition or troubled industrial facilities as defined in OAR 123-016-0010.

(3) Technical assistance and management consulting services may be provided in two phases:

(a) Phase one includes, but is not limited to, evaluation of, and recommendations for resolution of current problems in a business firm in transition or troubled industrial facility.

(b) Phase two includes more extensive involvement with a business firm in transition or troubled industrial facility where the economic survival of the facility or person is in serious question. When the results of phase one state that the continued operation of the facility is threatened, the loss of the facility would have an adverse economic impact on the community, and the person does not have the necessary financial resources to affect a turnaround, the Department may provide additional technical assistance to the facility.

(4) The relocation of a facility from one labor market in Oregon to another is not a permissible useof technical assistance or management consulting services.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0030
Application Procedure for Technical Assistance and Management Consulting

(1) Application shall be made to the Economic and Community Development Department on a form prescribed and provided by the Department.

(2) The department may request any additional information necessary to making a final determination on expenditures for professional services.

(3) The department may require an environmental quality review of the business firm or industrial facility to be analyzed by the technical assistance and management consulting services.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0040
Application Approval Procedures for Technical Assistance and Management Consulting

(1) All applications shall be reviewed by the Department.

(2) The department may also designate an advisory committee to review applications and make recommendations to the department.

(3) The department shall either approve, deny, request additional information or recommend a modification to the application.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0050
Eligibility for Feasibility Studies

(1) Eligible projects are feasibility studies as defined in OAR 123-016-0010.

(2) Eligible purposes are feasibility studies of:

(a) Closed facilities to determine a new product, market or ownership structure.

(b) Troubled facilities to determine the economic viability of a conversion to a new product, market or ownership structure where such analysis is needed to avoid a closure.

(3) Eligible applicants are those defined in OAR 123-016-0010(1) that represent a business firm in transition or a troubled industrial facility as defined in OAR 123-016-0010(12).

(4) The possible relocation of an industrial facility from one labor market in Oregon to another is not a permissible subject of a feasibility study.

(5) To be eligible for a feasibility study, a business firm in transition or troubled industrial facility must be evaluated under the technical assistance and management consulting portion of the program, and such evaluation must have resulted in a department recommendation that a feasibility study be performed. In the event of a closed facility, the department or its agent must recommend that a feasibility study be performed based on the reasonable probability of restarting or converting the facility.

(6) Feasibility studies may include (but are not limited to), the following:

(a) A proposal to convert an existing industrial facility to a new use.

(b) An analysis of new products and markets for an existing industrial facility.

(c) An assessment and appraisal of all the industrial facility's assets to be purchased.

(d) An analysis of the management structure at an industrial facility.

(e) An analysis of the financial structure of an industrial facility.

(f) An analysis of the alternative ownership possibilities for an industrial facility, including employee ownership.

(7) A feasibility study of an industrial facility should consider reemploying or continuing the employment of that facility's former or existing labor force.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0060
Feasibility Study Application Procedure

(1) Application shall be made to the Economic and Community Development Department on a form prescribed and provided by the department.

(2) The department may request any additional information necessary to make a final determination on expenditures for feasibility studies.

(3) The department may require a cost-benefit analysis of the project to help determine whether a feasibility study is necessary.

(4) The department may require an environmental quality review of the project to be analyzed by the feasibility study.

Stat. Auth: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0070
Feasibility Study Application Approval

(1) Applications shall be reviewed by the department. The department may also designate an advisory committee to review applications.

(2) The department shall either approve, deny, request additional information or recommend a modification to the application

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0075
Eligibility for Transition Plans and Restructuring Plans

(1) Eligible projects are transition plans and restructuring plans as defined in OAR 123-016-0010.

(2) Eligible applicants are those defined in OAR 123-016-0010(1).

(3) Transition and restructuring planning through department consultant services is intended to occur during the early stages of business distress, before a business firm or industrial facility reaches troubled status.

(4) The relocation of a business firm or industrial facility from one labor market in Oregon to another is not a permissible subject of transition planning or restructuring planning services.

Stat. Auth: ORS 285A.075
Stats. Implemented: ORS 285A.060
Hist.: EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0076
Application Procedure for Transition Plan or Restructuring Plan

(1) Application shall be made to the Economic and Community Development Department on a form prescribed and provided by the department.

(2) The department may request any additional information necessary to making a final determination on expenditures for professional services.

Stat. Auth: ORS 285A.075
Stats. Implemented: ORS 285A.060
Hist.: EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0080
Preferences

The department shall give preference in expending funds for technical assistance and management consulting services and feasibility studies to business firms in transition or troubled industrial facilities which have the following characteristics:

(1) The facility is located in a distressed area as designated under OAR 123-008.

(2) The facility is primarily engaged in the forestry, agriculture or fishing industries.

(3) The facility's products compete in markets for which national or international competition exists.

(4) The facility has the potential of becoming employee-owned.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0090
Expenditures

(1) The department may expend moneys from the fund for the purposes of conducting feasibility studies and technical assistance and management consulting of troubled companies.

(2) The department's expenditure for a feasibility study may not exceed $30,000 per applicant.

(3) A minimum of 25 percent of feasibility study cost must be contributed by the applicant in cash.

(4) The department's expenditures for technical assistance and management consulting may not exceed $15,000 for any one firm per applicant.

(5) The department may contract for feasibility studies and technical assistance and management consulting and must assure that contractors have expertise in this area and that costs are consistent with usual and customary rates. The department will only engage contractors who can demonstrate adequate expertise and experience in conducting business feasibility studies or, in the case of professional services, are certified, licensed, or otherwise experienced and qualified in their field.

(6) All services connected with feasibility studies must be completed within one year from the date of approval of expenditure by the department.

(7) The department may contract with a non-profit corporation to perform technical assistance to employee-owned industrial facilities or employee-ownership groups as defined in ORS 1987 Chapter 677.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88) cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

123-016-0100
Confidential Records

All records of troubled industrial facilities and persons associated with such facilities that are covered by ORS 192.500 are subject to absolute confidentiality as provided in ORS 192.500.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.224
Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88) cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08

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Employment Department
Chapter 471

Rule Caption: Customer Information and Disclosure (Confidentiality).
Adm. Order No.: ED 7-2008
Filed with Sec. of State: 5-20-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 4-1-2008
Rules Adopted: 471-010-0080, 471-010-0085, 471-010-0090, 471-010-0100, 471-010-0105, 471-010-0110, 471-010-0115, 471-010-0120, 471-010-0125
Subject: The adopted rules (0080, 0085, 0090, 0095, 0100, 0105, 0110, 0115, 0120, 0125) represent the Employment Department's new confidentiality rules which reflect the new language of ORS 657.665 regarding customer information and disclosure. These rules outline the department's confidentiality process.

The repealed rules (0050, 0051, 0052, 0054, 0055, 0057) are the department's old confidentiality rules; they are repealed and replaced with the newly adopted rules.
Rules Coordinator: Janet Orton—(503) 947-1724

471-010-0080
Definitions

(1) "Agent" means an individual or entity that is authorized to act for or in the place of another individual or entity.

(2) "Business" means any entity carrying on a trade or commercial enterprise that operates either inside or outside of Oregon and includes employers and employing units.

(3) "Customer" means any individual person seeking service from the Employment Department or other one-stop delivery system partner.

(4) "Employer" has the same meaning as in ORS 657.025

(5) "Employing Unit" has the same meaning as in ORS 657.020

(6) "Establishment" means an economic unit that produces goods or services, usually at a single physical location, and is engaged in one or predominantly one activity.

(7) "Governmental planning functions" means duties authorized by law which are undertaken by state, federal, or local government agencies, to facilitate policy decisions about the future. These functions include, but are not limited to, economic or similar modeling, impact analysis, projections, and forecasting.

(8) "Governmental performance measurement functions" means duties authorized by law which are undertaken by state, federal, or local government agencies regarding the success and impact of government programs.

(9) "Governmental program analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the impact and operation of government programs. These functions include, but are not limited to, fiscal analysis, budget analysis, and workload analysis.

(10) "Governmental socioeconomic functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the socioeconomic conditions in which the governmental entity is operating. These functions include, but are not limited to, the analysis of demographic, labor force, employment, and income trends.

(11) "Governmental policy analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to determine or better understand the impact of policy choices and decisions. These functions include, but are not limited to, economic impact analysis, trend analysis, and economic or similar modeling.

(12) "Hosted Worker" means a non-Department employee or volunteer who, under the supervision of an Employment Department management service employee, performs services in the area of the public labor exchange, such as: selecting and referring job seekers on employer openings on jobs listed with the Employment Department, assisting employers in listing jobs, providing marketing or outreach services to the business community, assisting customers with their iMatch Skills registration, and assisting in the resource rooms. The roles and responsibilities of the Hosted Worker, the Workers' responsibilities with respect to confidential information, and the penalties for unauthorized disclosure must be addressed in a written agreement with the Hosted Worker's actual employer or the Worker if there is no employer.

(13) "Information" means

(a) Data that pertains to an individual business or person;

(b) Aggregations of data about businesses in which there are fewer than three businesses or in which any one business accounts for more than 80 percent of the aggregated data; and

(c) Aggregations of data about persons in which there are fewer than three persons.

(14) "Need to Know" means that access to, possession of, or other use of customer-related information is essential in order to carry out official duties.

(15) "One-stop delivery system" means the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) or Regional Partnership Agreements (RPA) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(16) "One-stop delivery system partner" means entities authorized by the Workforce Investment Act and HB 3835 (Chapter 660; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) or Regional Partnership Agreements (RPA) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy. Entities may include private sector businesses that are a contracted agent of a governmental entity that is a one-stop delivery system agency or partner, and responsible for the delivery of Workforce Investment Act related services.

(17) "Public Official" means an official, agency, or public entity within the executive branch of Federal, State, or local government who, or which, has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(18) "Party" has the same meaning as in ORS 183.310(7).

(19) "Person" has the same meaning as in ORS 183.310(8).

(20) "Written disclosure agreement" means an interagency or other applicable agreement for sharing or disclosing information by written, electronic, paper, verbal or other means.

(21) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 as codified in Public Law 105-220.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0085
Responsibility of Employment Department Staff

(1) Department staff must safeguard the confidentiality of information collected or obtained and disclose only information about the customer that is authorized by law or that is necessary to administer ORS Chapter 657 and Chapter 657A.

(2) Department staff and any other entities or individuals with access to Employment Department information are authorized to access confidential information only on a "need to know" basis, as needed to perform official duties.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0090
Disclosure Charges

The department may charge a reasonable fee to reimburse it for the cost of providing records, including the cost of preparing the information and costs associated with implementing and maintaining written disclosure agreements.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0100
Information Collection

(1) The department shall only collect and maintain customer information that is relevant and necessary to administer ORS Chapter 657 and Chapter 657A.

(2) In addition to the mandatory disclosure of social security numbers required under OAR 471-030-0025, the department may request that customers voluntarily provide their social security number to facilitate program administration, including research and statistical data or for such other purposes as are disclosed to the customer. The department shall not refuse to provide a benefit or service to any customer that refuses a voluntary request to provide his or her social security number.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0105
General Disclosures

(1) The department is authorized to disclose confidential information or records to non-governmental entities if the non-governmental entity enters into a written disclosure agreement with the department that:

(a) Requires the non-governmental entity to obtain a written release from the individual or business to whom the information pertains, containing the following:

(A) A statement specifically identifying the information that is to be disclosed;

(B) Notice that state government files will be accessed to obtain the information;

(C) A statement identifying the specific purposes for which the information is sought, which must be limited to providing a service or benefit to the individual or business signing the release or carrying out administration or evaluation of a public program;

(D) A statement that information obtained under the release will only be used for that purpose or purposes; and

(E) A statement identifying all the parties who may receive the information;

(b) Requires the non-governmental entity to safeguard the information once in the hands of the non-governmental entity; and

(c) Requires the non-governmental entity to pay all costs associated with the disclosure.

(2) Unless otherwise authorized by these rules, the department is authorized to disclose confidential information or records to a customer or business only under the following provisions:

(a) The Oregon Employment Department staff is sure that the information was provided by the customer or business, or was previously provided to the customer or business; or

(b) For Oregon Employment Department wage records, the wage records are identified under the name, social security number or account number of the customer.

(3) The department is authorized to disclose confidential information or records to a third party or agent based on the informed consent of a customer or business if:

(a) The department receives a written release signed and dated by the customer or business that specifically states the information that may be disclosed and contains the information required by subsection (1)(a)(i)–(v) of this rule;

(b) The written release is witnessed or verified by a department staff person, or notarized; and

(c) The third party or agent presenting the request is the same party authorized to receive the information.

(d) The department will disclose only information that may be provided directly to the customer or business consenting to the disclosure.

(4) The department is authorized to disclose confidential information or records regarding a customer or business to the attorney for a customer or business pursuant to an informed consent from the customer or business that contains the information required in subsection (2) of this rule.

(a) If the attorney has been retained for purposes related to ORS Chapter 657 and the attorney asserts that he or she represents the customer or business, a written release that complies with subsection (2) of this rule is not required.

(b) The department will disclose only information that may be provided directly to the customer or business consenting to the disclosure.

(5) The department is authorized to disclose confidential information or records to a legislator or other elected official, or his or her staff, pursuant to an informed consent from a customer or business.

(a) A written release that complies with subsection (2) of this rule is not required if the department receives a copy of the letter written by the customer or business to the legislator or other elected official requesting the assistance of the elected official.

(b) If no letter is available, Oregon Employment Department staff will provide customer or business information only after receiving reasonable evidence from the legislator or other elected official, or his or her staff, that the customer or business authorized the disclosure.

(c) The department will disclose only information that may be provided directly to the customer or business consenting to the disclosure.

(6) Department staff must comply with Oregon child abuse reporting laws under ORS Chapter 419B.010, elderly abuse reporting laws under Chapter124.060, and patient abuse reporting laws under 677.190.

(7) Drug or alcohol abuse information or records received from federally funded treatment programs, facilities or activities may not be used or redisclosed by the department without the written consent of the patient or a court order and subpoena that comply with the requirements in 42 USC § 290dd-2 and 42 CFR Part 2.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0110
Unemployment Insurance Disclosures

(1) The department is authorized to disclose confidential information or records necessary to prepare for a pending hearing to the extent necessary for the proper presentation of an Oregon Unemployment Insurance benefit claim at a hearing before an Administrative Law Judge, once a request for hearing has been filed.

(2) The department is authorized to disclose confidential information or records necessary to prepare for a review arising under a state or federal program administered by the department to a party or agent of a party.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0115
Business and Employment Services Disclosures

(1) The Department is authorized to disclose confidential customer information or records to one-stop delivery system partners if:

(a) A written disclosure agreement exists between the Employment Department and one-stop delivery system partner addressing confidentiality and authorized uses of the customer information;

(b) The request is based on the one-stop delivery system partner's "need to know" to perform official duties of their program;

(c) The customer whose information or records are being disclosed has provided informed consent authorizing that the information may be shared or disclosed; and

(d) Notice is provided that a consent, or authorization, is on file or secured electronically within the workforce system.

(2) The department is authorized to share business information with one-stop delivery system partners if:

(a) A written disclosure agreement exists between the Employment Department and one-stop delivery system partner addressing confidentiality and authorized uses of the employer information;

(b) The request is based on the one-stop delivery system partner's "need to know" to perform official duties of their program;

(c) The information does not include employer wage records or employer tax data; and

(d) The information is necessary for providing services to businesses. The information to be shared may include details such as who to contact, planned contact schedules, employer training needs, and results of contacts and telephone calls for coordinated service delivery to the business community.

(3) The department is authorized to disclose job listing information to customers, under the following circumstances:

(a) For "self-refer" job listings, the job will be listed with all needed information displayed directly for all interested job seekers, who may then contact the employer directly; or

(b) For "suppressed" job listings, the needed information is only provided to job seekers who are determined to be qualified for the job listing, and who are then given contact information by the Employment

Department, authorized Hosted Workers, or one-stop delivery system partners with approved access to the information.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0120
Workforce and Economic Research Disclosures

(1) Department staff may share confidential information with public agencies for purposes of governmental planning, performance measurement, program analysis, socio-economic analysis, and policy analysis, if a written disclosure agreement is in place and if the requesting entity agrees to pay the costs of providing such information.

(2) Department staff may share confidential information with consultants and contractors working on specific projects for public agencies if those projects are for the purposes of governmental planning, performance measurement, program analysis, socio-economic analysis, and policy analysis; if a written disclosure agreement is in place between the Employment Department, the public agency, and the consultant or contracting firm; and if the requesting entity agrees to pay the costs of providing such information.

(3) Unless specifically noted elsewhere in ORS 657.665 or in this Rule, "governmental planning, performance measurement, program analysis, socioeconomic analysis and policy analysis functions" do not authorize the disclosure of confidential information:

(a) For purposes of mass mailings or marketing;

(b) That was collected by way of surveys conducted for statistical purposes, including those conducted in collaboration with the U.S. Bureau of Labor Statistics;

(c) For program eligibility or enforcement purposes; or

(d) Regarding individual persons, unless those persons have given their informed consent for such disclosure.

(4) Maps showing the location and characteristics of business establishments shall be limited by the following:

(a) The name, address, specific location, and specific employment or payroll information about the business will not be displayed.

(b) The employment level of the business will be computed and reflected as follows:

(A) An annual average employment level for each establishment shall be the sum of each individual month's employment divided by 12.

(B) This annual average employment level will be rounded to the nearest integer.

(C) These rounded annual average employment levels will be reflected on a map using no greater detail than the following size class breakouts: 0, 1–4, 5–9, 10–19, 20–49, 50–99, 100–249, 250–499, and 500 or greater. Aggregations of these size classes are permitted.

(c) Businesses in the following industries will not be presented on maps:

(A) All businesses in NAICS 624221 — Temporary Shelters

(B) All businesses in NAICS 814110 — Private Households

(5) For purposes of ORS 657.665(3)(a) and 657.665(4)(n), "local government" means cities, counties, and other political sub-divisions coded with an ownership code 3 in Employment Department records, with the exception of Indian tribal governmental agencies and other agencies specifically excluded based on other statutes or rules.

(6)(a) Department staff may disclose the North American Industry Classification System (NAICS) code of any business and, by extension, may provide the NAICS definition of the industry of any business. Additionally, Department staff may provide lists of businesses in particular NAICS codes. However, these disclosures may only include the name and NAICS code or definition of the business; they may not include additional information such as address, contact information, or employment-related data.

(b) The NAICS codes of businesses in following industries will not be shared, nor will lists of these businesses be shared:

(A) All businesses in NAICS 624221 — Temporary Shelters.

(B) All businesses in NAICS 814110 — Private Households.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

471-010-0125
Audit Authority and Written Agreements With Entities Having Access to Employment Department Information

(1) All written agreements with entities other than "Hosted Workers" that have access to Employment Department information shall stipulate that, no less than once a year, the entity shall conduct an audit of the processes by which the entity implements the agreement(s). The audits shall include, but are not limited to:

(a) How access to Employment Department information is granted;

(b) How access to Employment Department information is controlled;

(c) Why access to Employment Department information is granted, based on OAR 471-010-0054(14);

(d) Who is authorized to grant & revoke access to Employment Department information;

(e) What specific programs within the entity need access to Employment Department information;

(f) Which specific positions within the programs referenced in OAR 471-010-0057(1)(e) need access to Employment Department information;

(g) What specific information within the Employment Department information is needed;

(h) Whether access to Employment Department information is granted to contractors, who the contractor is, and why the contractor is being given access; and

(i) What "informed consent" if any, the entity uses when gathering information from its customers.

(2) These audits shall subsequently be submitted to the Employment Department, who shall have final authority to decide compliance with the procedures in OAR 471-010-0057(1).

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.665
Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08; ED 7-2008, f. 5-20-08, cert. ef. 7-1-08

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Rule Caption: Misrepresentation Qualification.
Adm. Order No.: ED 8-2008
Filed with Sec. of State: 5-20-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 3-1-2008
Rules Amended: 471-030-0052
Subject: Changes the penalties for fraud and misrepresentation to be in line with the new statutory penalties.
Rules Coordinator: Janet Orton—(503) 947-1724

471-030-0052
Misrepresentation Disqualification

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

(b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

(c) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings), the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or the number of weeks in which a disqualifying act(s) occurred, whichever is greater.

(d) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176 and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus four weeks.

(e) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings) and a failure to accurately report work and/or earnings, the

number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus the number of weeks in which a disqualifying act(s) occurred relating to the provisions of 657.155 (other than work and earnings).

(2) The number of weeks of disqualification assessed under section (1) of this rule shall be doubled, but not to exceed 52 weeks, if the individual has one previous disqualification under ORS 657.215, and that prior disqualification determination has become final.

(3) Notwithstanding sections (1) and (2) of this rule, the number of weeks of disqualification under ORS 657.215 shall be 52 weeks if:

(a) The disqualification under ORS 657.215 is because the individual committed forgery; or

(b) The individual has two previous disqualifications under ORS 657.215, and those prior two disqualification determinations have become final.

(4) Notwithstanding Sections (1), (2) and (3), an authorized representative of the Employment Department may determine the number of weeks of disqualification according to the circumstances of the individual case, but not to exceed 52 weeks.

(5) All disqualifications imposed under ORS 657.215 shall be served consecutively.

(6) Any week of disqualification imposed under ORS 657.215 may be satisfied by meeting all of the eligibility requirements of Chapter 657, other than 657.155(1)(e).

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.215
Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; ED 10-2003, f. 7-25-03, cert. ef. 7-27-03; ED 3-2008(Temp), f. & cert. ef. 2-15-08 thru 8-13-08; ED 8-2008, f. 5-20-08, cert. ef. 7-1-08

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Rule Caption: Customer Information and Disclosure (Confidentiality).
Adm. Order No.: ED 9-2008
Filed with Sec. of State: 6-2-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 4-1-2008
Rules Repealed: 471-010-0050, 471-010-0051, 471-010-0052, 471-010-0054, 471-010-0055, 471-010-0057
Subject: The Department has adopted new Customer Information and Disclosure rules (OAR 471-010-0080 through 0125), the old rules are repealed.
Rules Coordinator: Janet Orton—(503) 947-1724

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Land Conservation and Development Department
Chapter 660

Rule Caption: Permanent rules interpreting and implementing 2007 Ballot Measure 49, amending current rules, adopting additional rules.
Adm. Order No.: LCDD 4-2008
Filed with Sec. of State: 5-23-2008
Certified to be Effective: 5-23-08
Notice Publication Date: 4-1-2008
Rules Adopted: 660-041-0060, 660-041-0070, 660-041-0080, 660-041-0090, 660-041-0100, 660-041-0110, 660-041-0120, 660-041-0130, 660-041-0140, 660-041-0150, 660-041-0160, 660-041-0500, 660-041-0510, 660-041-0520, 660-041-0530
Rules Amended: 660-002-0010, 660-002-0015, 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030, 660-041-0040
Rules Repealed: 660-041-0050
Subject: These rules specify procedures and filing requirements for persons submitting a new 2007 Ballot Measure 49 claim. The rules address the effect of Measure 49 on waivers that have already been approved by DLCD under 2004 Ballot Measure 37, including the effect for purposes of the state agency coordination requirements under ORS 197.180. In addition, these rules amend the LCDC delegation of authority to the Director of DLCD to carry out the responsibilities and exercise the authorities of the Commission and DLCD to review and respond to claims under Measures 37 and 49. These rules establish the procedures for supplemental review of Measure 37 claims under Measure 49. The rules also interpret certain Measure 49 provisions for the purposes of determining whether Measure 37 claimants are entitled to relief under Measure 49 and, if so, what relief they are entitled to. The interpretive rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property. These permanent rules replace, repeal, amend or supplement temporary rules to implement Measure 49 adopted in December of 2007 and February of 2008, which expire on June 7, 2008.
Rules Coordinator: Bryan Cruz Gonzalez—(503) 373-0050, ext. 322

660-002-0010
Authority to Director

In addition to the other duties and responsibilities conferred on the Director by ORS Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

(1) Assent to a modification of a planning extension or a compliance schedule of a city or county in accordance with ORS 197.251(2);

(2) Condition a compliance schedule in accordance with ORS 197.252;

(3) Approve a planning assistance grant agreement with a city or county, including modifications thereto; and

(4) Request that the Commission schedule a hearing to consider an enforcement order if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(1) through (10);

(5) Execute any written order, on behalf of the Commission, which has been consented to in writing by the parties adversely affected thereby;

(6) Prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter;

(7) Establish procedures by which the Director shall periodically review and report to the Commission the status of comprehensive plans within each city and county;

(8) Carry out the responsibilities and exercise the authorities of the Commission and DLCD in responding to claims under ORS 197.352 (2004 Ballot Measure 37) and Chapter 424, Oregon Laws 2007 (2007 Ballot Measure 49), including:

(a) Review of claims made under ORS 197.352 and Chapter 424, Oregon Laws 2007;

(b) Denial of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007; and

(c) Approval of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007, except that the Director may approve a claim only by not applying the land use regulations that are the basis of the claim unless legislation is enacted that appropriates funds for the payment of claims under ORS 197.352 or Chapter 424, Oregon Laws 2007.

Stat. Auth.: ORS 183, 196 & 197, Ch. 424, OL 2007
Stats. Implemented: ORS 197.040, 197.045 & 197.090, Ch. 424, OL 2007
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCD 3-1979, f. & ef. 3-27-79; LCDC 7-1980(Temp), f. & ef. 12-17-80; LCD 1-1981, f. & ef. 2-23-81; LCD 4-1981, f. & ef. 4-3-81; LCDC 2-1983(Temp), f. & ef. 2-9-83; LCDC 3-1983, f. & ef. 5-5-83; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-002-0015
Notice of Director's Actions

(1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested member of the public and other units of government of the Director's actions taken pursuant to OAR 660-002-0010.

(2) The Director shall provide the Commission with a monthly report summarizing actions taken by the Director during the preceding month pursuant to this rule and any written public comments received by the Department which pertain to those actions.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040, 197.045 & 197.090
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0000
Purpose and Applicability

(1) The purpose of OAR 660-041-0000 to 660-041-0150 is to implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) by establishing procedures for Supplemental Review of Measure 37 Claims. These rules also contain requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a DLCD Measure 37 Waiver was required in addition to a waiver from a city or county. Finally,

these rules also explain the effect of Measure 49 on DLCD Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCD Measure 37 Waivers that are subject to OAR 660-041-0020 to 660-041-0160, as well as to the Supplemental Review of Measure 37 Claims under OAR 660-041-0080 to 660-041-0160.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and before December 6, 2007, and that are based on one or more DLCD Regulations.

(4) OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007.

(5) OAR 660-041-0040 to 660-041-0070 apply to all DLCD Measure 37 Waivers.

(6) OAR 660-041-0080 to 660-041-0160 apply to the Supplemental Review of a Claim by DLCD.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0010
Definitions

The following definitions apply to OAR 660-041-0000 to 660-041-0160:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claim" means a written demand for compensation under ORS 197.352 (2005) that was filed with the State of Oregon before December 6, 2007. If the Claim was filed with the State of Oregon after June 28, 2007, it qualifies as a Claim only if a corresponding Claim for the Measure 37 Claim Property was filed prior to that date with the city or county with land use jurisdiction over the Measure 37 Claim Property.

(3) "Claimant" means a person who submitted a Claim.

(4) "DAS" means the Department of Administrative Services.

(5) "DLCD" means the Department of Land Conservation and Development.

(6) "DLCD Measure 37 Waiver" means a decision by LCDC or DLCD that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCD Regulations to allow a Claimant to use the Measure 37 Claim Property for a use that was permitted when the Claimant acquired the Measure 37 Claim Property.

(7) "DLCD Regulation" means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.

(8) "Elected" means signed and filed the form provided by DLCD with a box checked.

(9) "Land Use Application" means an application for a "land use decision," a "limited land use decision," or an "expedited land division," as those terms are defined by ORS 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under 215.402 to 215.437.

(10) "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).

(11) "LCDC" means the Land Conservation and Development Commission.

(12) "Measure 37 Claim Property" means the private real property described in a Measure 37 Claim.

(13) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to authorize the development, division or other use of Measure 37 Claim Property pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also includes a final decision by a city, a county, or by Metro that a person has a vested right to complete or continue a use based on a Measure 37 Waiver.

(14) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more Land Use Regulations to allow a Claimant to use the Measure 37 Claim Property for a use that was permitted when the Claimant acquired the Measure 37 Claim Property.

(15) "Measure 49" means Chapter 424, Oregon Laws 2007.

(16) "Supplemental Information" means information needed by DLCD, under section 8(3) of Measure 49, to proceed with the Supplemental Review of a Claim.

(17) "Supplemental Review" means review by DLCD of a Claim under either section 6 or section 7 of Measure 49.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0020
Contents of a Measure 37 Claim Based on a DLCD Regulation

(1) When a Claim was received by DAS after December 4, 2006 and was based on one or more Existing DLCD Regulations, then the Claim must:

(a) Demonstrate that a city, county, Metro, or an Agency applied one or more Existing DLCD Regulations, or applied one or more city, county or Metro land use regulations that implement Existing DLCD Regulations, as approval criteria to an application submitted by the Claimant; and

(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that included the Measure 37 Claim Property and that requested authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCD Regulations or city, county or Metro Land Use Regulations that implement Existing DLCD Regulations were approval criteria for the decision; or

(B) A copy of the final written action by an Agency on a complete application to the Agency, in which the Agency determined that one or more Existing DLCD Regulations were approval criteria for the application.

(2) When a Claim was based on one or more New DLCD Regulations, then the Claim must:

(a) Have been received by DAS within two years of:

(A) The effective date of the New DLCD Regulation; or

(B) Within two years of the date the Claimant submitted a Land Use Application in which the Land Use Regulations were approval criteria, whichever was later; and

(b) If the Claim was submitted more than two years after the effective date of the New DLCD Regulation, the Claim must include a copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Measure 37 Claim Property and that requested authorization for the specific use that the Claim was based on, in which the city, county, or Metro determined that the New DLCD Regulation or city or county or Metro Land Use Regulation that implemented the New DLCD Regulation were approval criteria for the decision.

(3) When a Claim was based on both Existing and New DLCD Regulations, the requirements of section (1) of this rule must be met with respect to the Existing DLCD Regulation, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulation.

(4) A DLDC Regulation was applied as an approval criterion for purposes of this rule and ORS 197.352(5) (2005) when a city, county or Metro made a final written decision on a Land Use Application, or when an Agency took final written action on an application to that Agency, and that final written decision or final written action denied the application or conditioned the approval of the application on the basis (in whole or in part) of the DLCD Regulation.

(5) This rule applies only to Claims that were received by DAS after December 4, 2006, and that were based on one or more DLCD Regulations.

Stat. Auth.: ORS 197.040 & 197.065
Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0030
Notice of Applications and Decisions

(1) Except for a building permit that is not a "land use decision" under ORS 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit, filed with or made by the city, county or Metro after February 20, 2007.

(2) Notice of an application for a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office at least ten (10) calendar days before any deadline for comment on the application for a Measure 37 Permit. If there is no opportunity for comment, then the

notice must be sent ten (10) days before the decision becomes final. The notice must include:

(a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;

(b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);

(d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject Land Use Application; and,

(e) The name of the present owner of the Measure 37 Claim Property.

(3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office within ten (10) calendar days of the date of the final written decision. The notice must include a copy of the final written decision.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0040
When a DLCD Measure 37 Waiver is Required

Before a Claimant could lawfully use Measure 37 Claim Property for a use under a Measure 37 Waiver, the Claimant must have obtained a DLCD Measure 37 Waiver for that use of the Measure 37 Claim Property in all cases where that use was restricted by a DLCD Regulation or by a city, county or Metro Land Use Regulation that implements a DLCD Regulation. These cases include, but are not limited to, all cases where the use is a use of land, and the Measure 37 Claim Property includes:

(1) Land zoned for farm use under Goal 3;

(2) Land zoned for forest use under Goal 4; or

(3) Land outside of an acknowledged urban growth boundary where the Claimant's desired use of the Measure 37 Claim Property was an urban use under Goal 14, or that use included the establishment or extension of a sewer or water system restricted under Goal 11.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0060
Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers

Any authorization for a Claimant to use Measure 37 Claim Property without application of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6, 2007, as did the effect of any order of DLCD denying a Claim. A Claimant may continue an existing use of Measure 37 Claim Property that was authorized under ORS 197.352 (2005). A Claimant may complete a use of Measure 37 Claim Property that was begun prior to December 6, 2007, only if the Claimant had a common law vested right to complete and continue that use on December 6, 2007, and the use complies with the terms of any applicable DLCD Measure 37 Waiver.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0070
State Agency and Special District Land Use Coordination and DLCD Measure 37 Waivers

After December 5, 2007, when a state agency or a special district is required to take an action in a manner that complies with the Statewide Planning Goals and that is compatible with comprehensive plans and land use regulations under ORS 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state agency or special district must not take that action if it involves a use of Measure 37 Claim Property based on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land Use Regulation based on a DLCD Measure 37 Waiver has expired, and a DLCD Measure 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or 195.020. This rule does not apply to a use that was lawfully established or vested based on a DLCD Measure 37 Waiver on December 6, 2007.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0080
Supplemental Information for Supplemental Review of Measure 37 Claims under Measure 49

(1) If the record for the Claim does not include the information needed for DLCD to proceed with the Supplemental Review of the Claim, DLCD will request Supplemental Information from a Claimant or the Claimant's authorized agent.

(2) Supplemental Information requested by DLCD must be filed with DLCD within fifty-six (56) days of the date the request is sent and must be filed in the manner described in OAR 660-041-0100.

(3) For good cause shown, DLCD may extend the period for filing Supplemental Information beyond fifty-six (56) days.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0090
Procedures for Supplemental Review of Measure 37 Claims under Measure 49

(1) If a Claimant files an Election seeking relief under section 6 or section 7 of Measure 49, DLCD will review the Claim, as supplemented by the Election and the Supplemental Information, and prepare a Preliminary Evaluation of the relief that the Claimant may be entitled to. The Preliminary Evaluation will be based on and include an initial preliminary assessment of the number of lots, parcels and dwellings, if any, the Claimant lawfully was permitted to establish on the date the Claimant acquired the Measure 37 Claim Property.

(2) Prior to the issuance of the Preliminary Evaluation, DLCD will mail written notice of the Supplemental Review and a copy of any materials submitted by the Claimant to the county with land use jurisdiction over the Measure 37 Claim Property, and will provide that county an opportunity to submit written comment on the Supplemental Review. DLCD will consider all comments from the county in its preparation of the Preliminary Evaluation.

(3) DLCD will mail Notice of the Preliminary Evaluation to the Claimant, the Claimant's authorized agent, the county with land use jurisdiction over the Measure 37 Claim Property, and to any person who is an owner of record of real property located either within 250 feet of the Measure 37 Claim Property, if the Measure 37 Claim Property is not within a farm or forest zone, or within 750 feet of the Measure 37 Claim Property if it is located in a farm or forest zone, and to any neighborhood or community organization(s) whose boundaries include any portion of the Measure 37 Claim Property or that has made a written request for a copy of the Preliminary Evaluation.

(4) Any person may submit written comments, evidence or information in response to the Preliminary Evaluation as provided in OAR 660-041-0100 within twenty-eight (28) days of the date the Preliminary Evaluation is mailed under section (3) of this rule.

(5) DLCD will mail copies of any comments, evidence and information concerning the Preliminary Evaluation that are timely received under section (4) of this rule to the Claimant and the Claimant's authorized agent.

(6) The Claimant and the Claimant's authorized agent may file written comments, evidence or information in response to any materials filed by a third party or county. To be considered by DLCD, the response must filed as provided in OAR 660-041-0100 within twenty-one (21) days after the date DLCD mailed the comments, evidence and information to the Claimant and the Claimant's authorized agent as provided under section (5) of this rule.

(7) Based on the record, DLCD will prepare a Final Decision on the Claim, which either will deny the authorization of home sites or will approve the specific number of home sites under section 6 or section 7 of Measure 49 to which the Claimant is entitled. If approved, the Final Decision will authorize the county with land use jurisdiction over the Measure 37 Claim Property to approve a permit to allow the number of home sites approved.

(8) Following issuance of the Final Decision, the owner of the Measure 37 Claim Property may file an application with the county with land use jurisdiction over the Measure 37 Claim Property for a permit to establish home sites authorized under the Final Decision.

(9) For good cause shown, DLCD may extend any time period under this rule.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0100
Submissions to DLCD Regarding Supplemental Review of a Measure 37 Claim under Measure 49

(1) A Claimant may file the form electing how the Claimant wishes to proceed under sections 5 to 11 of Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) only after receiving the notice and form from DLCD.

(2) All information filed with DLCD regarding the Supplemental Review of a Claim must be filed at:

Supplemental Measure 49 Claim Review
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

(3) Submissions regarding a Supplemental Review shall not be submitted by facsimile or electronically.

(4) The date information is filed is the date the information is received by DLCD, or the date it is mailed, provided it is mailed by registered or certified mail and the person filing the information has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0110
Determining What Was Lawfully Permitted on the Claimant's Acquisition Date

(1) A Claimant lawfully was permitted to establish one or more lots, parcels or dwellings on the Claimant's acquisition date if DLCD determines that the characteristics of the Measure 37 Claim Property as it existed on that date, including the size, soil quality and location of the Measure 37 Claim Property, would have allowed the Claimant to satisfy the standards and criteria for approval of the lot, parcel or dwelling in effect on that date.

(2) Based on the Claimant's acquisition date, as determined under ORS 195.328, DLCD will apply the following standards and criteria to determine the number of lots, parcels or dwellings that were lawfully permitted:

(a) If the Claimant's acquisition date is prior to January 25, 1975, DLCD will apply the applicable local land use regulations and comprehensive plan provisions, if any, along with any directly-applicable state statutes;

(b) If the Claimant's acquisition date is on or after January 25, 1975 but before the date the county with land use jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan and land use regulations acknowledged by LCDC for compliance with the Statewide Planning Goals, DLCD will apply the first applicable acknowledged local land use regulations, unless the Claimant establishes that the number of lots, parcels or dwellings that would have been lawfully permitted under the first acknowledged local land use regulations is smaller than the number of lots, parcels or dwellings that would have been lawfully permitted under direct application of one or more applicable state statutes, Statewide Planning Goals, or LCDC rules; and

(c) If the Claimant's acquisition date is on or after the date the county with land use jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan and local land use regulations acknowledged by LCDC for compliance with the Statewide Planning Goals, DLCD will apply the applicable local land use regulations and comprehensive plan provisions along with any directly-applicable state statutes, Statewide Planning Goals, or LCDC rules.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0120
Evaluation of Measure 37 Contiguous Property in Supplemental Review

(1) For purposes of the Supplemental Review of a Claim, ownership of contiguous property will be determined and evaluated as of the date the Claimant Elected relief under section 6 or section 7 of Measure 49.

(2) In determining the relief to which a Claimant is entitled under section 6 or section 7 of Measure 49, the number of home site approvals a Claimant is entitled to will be reduced by the number of existing lots, parcels and dwellings contained within the entire property, which includes both the Measure 37 Claim Property and any contiguous property in the same ownership.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0130
High-Value Farmland and High-Value Forestland

(1) Measure 37 Claim Property is high-value farmland as described in ORS 195.300(10) if:

(a) The Measure 37 Claim Property meets the criteria in ORS 195.300(10)(a) or (b), or both ORS 195.300(10)(a) and (b);

(b) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(c);

(c) The Measure 37 Claim Property is greater than five acres in size and all of the Measure 37 Claim Property is planted in wine grapes, as provided by ORS 195.300(10)(d); or

(d) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(e) or (f), or both ORS 195.300(10)(e) and (f).

(2) Measure 37 Claim Property is high-value forestland if it meets the criteria in ORS 195.300(11).

(3) To determine the cubic foot potential of Measure 37 Claim Property and whether it is high-value forestland as described in ORS 195.300(11), DLCD will use soil survey information from the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), unless other information or data are made a part of the record for the Supplemental Review, in which case DLCD will consider such information or data along with any pertinent NRCS information.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0140
Groundwater Restricted Areas

Measure 37 Claim Property is in a Ground Water Restricted Area if the Measure 37 Claim Property is located entirely within the boundaries of a Ground Water Limited Area or Critical Ground Water Area, or both.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0150
Combining and Dividing Claims

To evaluate the relief, if any, to which each Claimant is entitled under section 6 or section 7 of Measure 49, DLCD will divide a single Claim into two or more claims if the Measure 37 Claim Property contains multiple lots or parcels that are not in the same ownership. In addition, DLCD will combine multiple Claims into one claim if the Measure 37 Claim Property contains multiple contiguous lots or parcels that are in the same ownership.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0160
Appraisals Under Section 7 of Measure 49

(1) A Claimant seeking relief under section 7 of Measure 49 must provide an appraisal for the Measure 37 Claim Property showing the fair market value one year before the enactment of the Land Use Regulation(s) that are the basis for the Claim, and the fair market value one year after the enactment of the Land Use Regulation(s).

(2) The appraisal provided under this rule must also show the present fair market value of each lot, parcel or dwelling that the Claimant is seeking under section 7(2) of Measure 49. The appraisal must comply with all provisions of section 7(7) of Measure 49.

(3) For the Claimant to obtain relief under section 7, the appraisal must show that the enactment of one or more Land Use Regulations that are the basis of the Claim, other than land use regulations described in ORS 197.352(3) (2005), caused a reduction in the fair market value of the Measure 37 Claim Property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under section 7(2) of Measure 49. The reduction in fair market value of the Measure 37 Claim Property must be measured as set forth in section 7(6) of Measure 49.

Stat. Auth.: ORS 197.040, 197.065 & Ch. 424, OL 2007
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & Ch. 424, OL 2007
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0500
Purpose and Applicability

The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement ORS 195.300 to 195.336 (2007 Oregon Ballot Measure 49) in terms of the requirements and procedures for filing and reviewing Measure 49 Claims. These rules apply to Measure 49 Claims filed with the State of Oregon.

Stat. Auth.: ORS 195.300 - 195.336, 197.040 & 197.065
Stats. Implemented: ORS 195.300-195.336, 197.015, 197.040, 197.065, 197.353
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0510
Definitions

The following definitions apply to OAR 660-041-0500 to 660-041-0530:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claimant" means an Owner who filed a Measure 49 Claim.

(3) "DLCD" means the Department of Land Conservation and Development.

(4) "DLCD Regulation" has the meaning provided by ORS 195.300(14)(a)-(b) and 195.300(14)(g).

(5) "Farming Practice" has the meaning provided by ORS 195.300(5).

(6) "File" or "Filed" has the meaning provided by ORS 195.300(7). The date a document is Filed is the date that it is received by the Public Entity.

(7) "Forest Practice" has the meaning provided by ORS 195.300(8).

(8) "Land Use Regulation" has the meaning provided by ORS 195.300(14). A "New Land Use Regulation" means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency on or after January 1, 2007.

(9) "Lot" means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(10) "Measure 49 Claim" means:

(a) A claim Filed with the State of Oregon under ORS 195.300 to 195.336 after December 5, 2007; and

(b) A claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between June 29, 2007 and December 5, 2007 if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007.

(11) "Owner" has the meaning provided by ORS 195.300(16).

(12) "Parcel" means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(13) "Property" has the meaning provided by ORS 195.300(17).

(14) "Regulating Entity" means an Agency that has enacted, or has authority to remove, modify or not apply, the Land Use Regulation(s) identified in the Measure 49 Claim.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 195.300-195.336, 197.015, 197.040, 197.065, 197.353
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0520
Procedures for Measure 49 Claims

(1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized agent of the Owner. A Measure 49 Claim must be Filed on a claim form available from DLCD at the address provided in this rule, or from DLCD's website, and must contain all information required by the form. Claims may not be submitted by facsimile or electronically.

(2) A Measure 49 Claim must be Filed with DLCD at:
Measure 49 Claims
635 Capitol St. NE, Suite 150
Salem 97301-2540

(3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, and if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007, the Measure 37 Claim is deemed Filed on December 6, 2007 for purposes of ORS 195.312.

(4) DLCD's form for a Measure 49 Claim will require at least the following information:

(a) The name and mailing address of each Claimant and each Owner of the Property.

(b) Evidence establishing that each Claimant is an Owner of the Property.

(c) The consent to the Measure 49 Claim by each Owner of the Property if there are Owners of the Property other than the Claimant, which consent must be notarized.

(d) A description of the Claimant's specific desired use of the Property, which use must be a residential use or a Farming Practice or a Forest Practice. The description must be sufficiently specific to establish that each Land Use Regulation listed under paragraph (g) of this rule applies to and restricts the Claimant's desired use.

(e) The location of the Property by reference to:

(A) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(B) The street address of each Lot or Parcel that makes up the Property, if a street address has been assigned;

(C) The county the Property is located in; and

(D) If the Property is located within a city, the name of that city.

(f) Evidence of each Claimant's Acquisition Date, as provided in ORS 195.328;

(g) A listing of each specific New Land Use Regulation that is alleged to restrict the Claimant's desired use of the Property, and for each New Land Use Regulation listed, a description of how that regulation restricts the Claimant's desired use of the property;

(h) An appraisal of the reduction in the fair market value of the Property caused by the enactment of each listed New Land Use Regulation as provided in ORS 195.310.

(5) DLCD will review a Measure 49 Claim to determine whether it complies with the requirements of ORS 195.310 to 195.312. If the Measure 49 Claim is incomplete, within sixty (60) days of receiving the Claim, DLCD will notify the person who filed the Claim of the information that is missing. The notification will be in writing. A Measure 49 Claim is complete when DLCD receives:

(a) The missing information;

(b) Part of the missing information and written notice from the Claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the Claimant that none of the missing information will be provided.

(6) If a Claimant submits a request in writing for additional time to provide missing information, DLCD may for good cause shown agree to provide such additional time, which agreement must be in writing. An agreement to allow additional time has the effect of abating the time requirements under ORS 195.312 and 195.314, until the date specified in the agreement.

(7) If DLCD does not notify the Claimant within sixty (60) days after a Measure 49 Claim is Filed that information is missing from the Claim, the Claim is deemed complete when Filed.

(8) If the Claimant does not respond in writing to the written notification from DLCD under section (5) of this rule within sixty (60) days of the date the written notification was sent, the Claim is deemed withdrawn.

(9) DLCD will provide notice of a Measure 49 Claim as provided by ORS 195.314. The notice will describe the Measure 49 Claim and specify a deadline by which written evidence and arguments must be Filed. The Claimant may respond to the written evidence and argument by Filing a written response within fifteen (15) days of the date specified as the deadline for the initial evidence and argument.

(10) DLCD will mail a copy of its final determination to the Claimant and to any person who timely filed written evidence or arguments.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 195.300-195.336, 197.015, 197.040, 197.065, 197.353
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0530
Coordinating with Other Regulating Entities

(1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation that was enacted by an Agency other than DLCD, or the New Land Use Regulation is a state statute that is administered by an Agency other than DLCD, DLCD will forward the Claim to that Agency.

(2) When a Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation for which there is no Regulating Entity, DLCD will forward the Claim to the Department of Administrative Services.

(3) When a Regulating Entity other than DLCD is wholly responsible for a Measure 49 Claim, that Regulating Entity will process the Claim using the procedures set forth in OAR 660-041-0520 unless that Regulating Entity has adopted its own procedures for review.

(4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49 Claim, DLCD will coordinate the review of the Claim under the procedures set forth in OAR 660-041-0520. However, the other Regulating Entity will decide whether the Claimant is entitled to relief with respect to the New Land Use Regulations that it enacted or that it adminis-

ters as provided in ORS 195.300 to 195.336 and if so what form of relief to grant under ORS 195.310(5) with respect to those regulations.

(5) DLCD will issue the final order itself or jointly with one or more other Regulating Entities.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 195.300-195.336, 197.015, 197.040, 197.065, 197.353
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

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Landscape Contractors Board
Chapter 808

Rule Caption: Amended to meet new requirements and housekeeping.
Adm. Order No.: LCB 6-2008
Filed with Sec. of State: 6-2-2008
Certified to be Effective: 6-2-08
Notice Publication Date: 4-1-2008
Rules Adopted: 808-002-0623
Rules Amended: 808-002-0734, 808-003-0030, 808-003-0125, 808-030-0010
Subject: 808-002-0623 — Adopts definition of manages or share in the management.

808-002-0734 — Removes previous definition of manages or shares in management.

808-003-0030 — Clarifies when a probationary application expires.

808-003-0125 — Requires managing employee or owner to notify the LCB if they are no longer acting in this role.

808-003-0010 — Removes requirement that managing employee or owner to notify the LCB if they are no longer acting in this role from this rule because it is being adopted under the notification rule of 808-003-0125.
Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-002-0623
Manages or shares in the management

"Manages or shares in the management" means to have a position in the business that is accountable for exercising delegated authority over the human and financial resources to accomplish the objectives of the business which may include, but is not limited to, the performance of the planning, directing, implement, organizing, evaluation, supervising or administering the operations of the business and includes the preparation or administration of contracts for landscaping work performed by the business.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.610, 671.571 & 671.595
Hist.: LCB 2-2008, f. & cert. ef. 6-2-08

808-002-0734
Owner

(1) "Owner," as defined in Chapter 609, Oregon Laws 2005, Section 7(1)(d) means:

(a) A person described in Chapter 609, Oregon Laws 2005, section 7(1)(d);

(b) A general partner in a limited partnership;

(c) A majority stockholder in a limited partnership;

(d) A manager in a manager-managed limited liability company;

(e) A member in a member-managed limited liability company; or

(f) A person who has a financial interest in a business and manages or shares in the management of the business.

(2) For purposes of this rule, "manages or shares in the management" has the meaning given in OAR 808-002-0623.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: 2005 OL Ch. 609
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 2-2008, f. & cert. ef. 6-2-08

808-003-0030
Expiration of Application

Applicants who fail to complete the license process within the following time periods must submit a new application and fee and, if applicable, retake and pass the exam.

(1) A landscape contracting business license application will expire one year from the date the application was received by the agency.

(2) Except as provided in subsection (3), an individual landscape construction professional license application will expire two years after the last examination sitting or two years after the application was received by the agency, whichever is later. Exam results are subject to OAR 808-003-0065.

(3) An individual landscape construction professional application for a Probationary All Phase Plus Backflow license will expire one year after the first sitting for any section of the exam. Exam results are subject to OAR 808-003-0065.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.670
Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0017; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 2-2008, f. & cert. ef. 6-2-08

808-003-0125
Notification

(1) Within ten (10) days following a change of ownership, address, or bond/deposit information, the landscape construction professional or landscape contracting business shall submit written notification to the agency as provided in ORS 671.603.

(2) If a managing employee or owner is no longer acting in this role, the landscape contracting business shall so notify the Board, in writing, within 10 calendar days of the date on which the managing employe or owner ceased to act in that role and have designated a new managing employee or owner within 30 days of the date the resignation of the previous managing employee.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.600 & 671.605
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0034; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 2-2008, f. & cert. ef. 6-2-08

808-030-0010
Owner/Managing Employee

(1) As used in these rules, a managing employee has that meaning as provided in OAR 808-002-0625 and owner has the meaning as provided in 808-002-0734

(2) Upon initial application, an applicant for a landscape contracting business license shall designate at least one managing employee or owner and provide evidence that this individual has completed the course and passed the test as provided for in Chapter 249, Oregon Laws, 2007 Section 2(2)

(3) An employee who is not an owner may not be designated as the managing employee of more than one landscape contracting business.

(4) Landscape contracting businesses actively licensed prior to January 1, 2008 are not required to meet the requirements of Chapter 249, Oregon Laws 2007 Section 2(2) unless the business is required to make application for a new business license as required in ORS 671.600, 671.660, or OAR 808-003-0220 on or after January 1, 2008.

(5) Landscape contracting businesses issued on or after January 1, 2008 and before January 1, 2009 must meet the requirements of Chapter 249, Oregon Laws 2007, Section 2(2) on or before the expiration date of that license in the year 2009.

Stat. Auth.: ORS 670.310, 671.670
Stats. Implemented: 2007 OL Ch. 249
Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 2-2008, f. & cert. ef. 6-2-08

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Office of Private Health Partnerships
Chapter 442

Rule Caption: Gives FHIAP ability to limit or prohibit adding dependents for budget reasons.
Adm. Order No.: OPHP 2-2008(Temp)
Filed with Sec. of State: 5-19-2008
Certified to be Effective: 5-19-08 thru 11-14-08
Notice Publication Date:
Rules Amended: 442-005-0250
Subject: FHIAP is amending 442-005-0250 to give the program the authority to limit or prohibit member' ability to add dependents to enrolled accounts when doing so would cause subsidies to exceed projected budgeted funds.

In late October 2007, the federal government told us that we could no longer use SCHIP funds for adults in the program. This change resulted in a 12 percent reduction on our deferral funding and prompted the need to reduce our enrollment by approximately 4000 adult members. To accommodate this reduction, effective June 1, 2008, FHIAP Individual members below 85% federal poverty level (FPL) lost their FHIAP subsidy and chose to either self pay their

insurance premium or transfer to the Oregon Health Plan for a minimum of six months.

Although many of the transfer population who chose OHP will continue to be eligible for the Medicaid program at the end of the guaranteed six month eligibility period, some will not, primarily because asset requirements differ between the two programs. As a result, many who no longer qualify for OHP will be looking for assistance from FHIAP again.

When the decision was made to offer this population an opportunity to transfer to OHP, candidates were given the option to keep their children enrolled in FHIAP or to apply for OHP Plus benefits. A large percent chose to keep their children in FHIAP. Current policy would therefore allow these former members to come back to FHIAP as an add dependent. As outlined in OAR 442-005-0250(1), when a family member is enrolled in FHIAP, other family members can be added to the account (without an application) using an add dependent form.

This rule presents a problem for FHIAP, however. If FHIAP transfer members are allowed to come back into the program at the end of their six-month OHP eligibility, FHIAP will experience a budget shortfall potentially requiring additional remedies.

Rules Coordinator: Cindy Bowman—(503) 378-4674

442-005-0250
Adding Dependents

(1) Members may add dependents to their FHIAP enrollment at any time throughout the 12-month eligibility period as long as the dependent meets the period of uninsurance requirement or exceptions outlined in OAR 442-005-0060.

(2) FHIAP may limit or prohibit the ability to add dependents when doing so would cause projected program costs to exceed the funding available to cover subsidy payments for those enrolled.

(3) Premium rates and the member's portion of the premium could change as a result of adding dependents.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 2-2008(Temp), f. & cert. ef. 5-19-08 thru 11-14-08

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Oregon Commission on Children and Families
Chapter 423

Rule Caption: Clarify OAR 423-010-0023(1) that requires 2.0 FTE.
Adm. Order No.: OCCF 2-2008(Temp)
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 5-30-08 thru 11-25-08
Notice Publication Date:
Rules Amended: 423-010-0023
Subject: The proposed rule amendment clarifies the minimum 2.0 FTE set forth in OAR 423-010-0023(1).
Rules Coordinator: Marsha Clark—(503) 373-1283

423-010-0023
Categorization and Limitation of Local Commission Costs

(1) Basic Capacity:

(a) The State Commission determines a biennial allocation of funds to assist Local Commissions in the costs associated with meeting the intent of the Partnership Agreement and the Components Document. County Basic Capacity allocations may be used for activities in accordance to the limitations in 423-010-0023(5) for costs associated with operating an office, which include functions such as policy and planning, evaluation of state and local outcomes, information systems, fiscal and budget, communications, personnel, reception, general correspondence, contracting processes, mapping systems, designing and assessing strategies, and other related functions of the Local Commission office. Basic Capacity may also be used for costs associated with the monitoring of contracts, quality control, and the measurement of outcomes to determine the efficiency and effectiveness of an activity.

NOTE: Copies of the Partnership Agreement and the Components Document are available from the Agency.

(b) Each county will employ at least 2.0 full-time equivalent (FTE) Local Commission staff, either as employees or contractors, from the Basic Capacity allocation to meet the requirements of OAR 423-010-023(1)(a).

(A) Each county will employ one (1) full-time (1.0 FTE) position to serve as the Local Commission Director. The remaining required FTE (1.0) may be configured flexibly.

(B) The Local Commission Director will:

(1) Be an upper level managerial position within the county structure that reports directly to the Board of County Commissioners or County Court with overall responsibility for the daily operations of the Local Commission;

(2) Be responsible for leadership, advocacy and key management to enable the Local Commission to meet the requirements of ORS 417.760 through 417.795.

(3) Provide information and policy recommendations on the health and wellbeing of the county's children and families directly to the Board of County Commissioners or County Court; and

(4) Possess the leadership and professional skills necessary to build the Local Commission and meet the requirements of 423-010-0023(1)

(c) The Executive Committee of the State Commission may waive the 2.0 full-time equivalent staff requirement only when the following criteria have been met:

(A) A plan for staffing is submitted to the Agency that includes a detailed description of how the staffing plan meets the requirements of the Partnership Agreement and accomplishes critical areas of the Components Document and documents in-kind, volunteer assistance or other methods to meet those requirements.

(B) A review is completed by the Agency of past performance of the Local Commission, including meeting timelines, monitoring and compliance requirements, and quality of plans and outcomes.

(C) A written description is provided to the Agency that demonstrates that there is no real or perceived conflict of interest or conflict with ORS 417.775(2)(a), which prohibits Local Commissions from providing direct services.

(D) Letters or other form of written communication that support the waiver request are provided from community partners from formal and informal systems that work regularly with the Local Commission in accomplishing its work.

(E) Written evidence of the Local Commission recommendation and BOCC support.

(F) If the Local Commission disagrees with the decision of the Executive Committee, it may request reconsideration of the decision at the next regularly scheduled meeting of the Executive Committee. Following that, the Local Commission may appeal the decision to the State Commission at its next regularly scheduled meeting.

(d) Funds remaining in the Basic Capacity allocation after meeting the requirement of 423-010-0023(1)(a) may be used for Community Mobilization or programs or services to children and families that are identified in the Local Plan.

(e) Basic Capacity appropriations cannot be carried from one biennium to the next pursuant to OAR 423-010-0027(7) and (8), but will revert to the State if not obligated or expended at the end of the biennium.

(2) Community Mobilization: Counties may allocate funds for the purposes of community mobilization activities and strategies from locally invested funds as defined in OAR 423-001-006 (20). All community mobilization activities and strategies funded with locally invested funds must use proven practices of effectiveness and outcomes data must be reported for each activity and strategy.

(3) Medicaid (Title XIX): Local Commissions may allocate a combined total of 5 percent of Medicaid (Title XIX) earned income for administration and community mobilization. There is no limit to the amount that can be allocated to service providers so long as the Medicaid (Title XIX) earnings are reinvested in the program from which they were earned.

(4) Local Commissions may allocate up to a total of 4 percent of Healthy Start General Fund for contract management functions.

(5) Limitation on Usage:

(a) Consistent with the terms and conditions in the Intergovernmental Agreement, all budget allocations will be directly related to at least one strategy in the Local Plan, meet the purpose and restrictions of each program area and grant stream, and have measurable outcomes.

(b) Service provider contracts: Counties may allocate funds to providers for the cost of services or activities to children and families, however all services or activities must be identified in the Local Plan.

(c) Services and programs funded by another federal or state funding source cannot be funded with OCCF dollars when blending of those funds are not allowed by state or federal agreements or when duplication will occur.

(d) County Indirect/Direct Cost Assessment: Counties may assess direct and indirect charges from the Basic Capacity funding stream at an assessment no higher than 10 percent of the total annual Local Commission allocation from the Agency less funding streams expressly disallowed by state or federal statute or rule. This rule is subject to monitoring and review by the Agency.

(6) A Local Commission may not provide direct services for children, youth and families or the management, administration or fiscal responsibility of programs that have direct contact with children or families. However a Local Commission may provide direct services for children, youth or families for a period not to exceed six months under the following conditions:

(a) The Local Commission determines that there is an emergency;

(b) A local activity provider discontinues providing the services in the county or region; or

(c) The Local Commission determines no provider is able to offer the services in the county or region. The State Commission will not allow an extension beyond six months. Local Commissions not in compliance with this section will be subject to withholding of funds as noted in OAR 423-010-0027(9).

(7) Agency Approval: Budget allocations effectuated pursuant to the Intergovernmental Agreement and amendments will be subject to Agency review and approval.

Stat. Auth.: ORS 417.705 - 417.797
Stats. Implemented: ORS 417.705 - 417.797
Hist.: CCF 3-1994, f. & cert. ef. 5-18-94; CCF 1-1995, f. & cert. ef. 8-1-95; CCF 1-1997, f. 12-15-97, cert. ef. 12-19-97; OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 3-2007(Temp), f. 5-8-07, cert. ef. 5-11-07 thru 9-7-07; Administrative correction 8-16-07; OCCF 2-2008(Temp), f. & cert. ef. 6-30-08 thru 11-25-08

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Oregon Department of Education
Chapter 581

Rule Caption: Prohibits discrimination based on sexual orientation and color in schools, programs, services and activities.
Adm. Order No.: ODE 13-2008
Filed with Sec. of State: 5-23-2008
Certified to be Effective: 5-23-08
Notice Publication Date: 3-1-2008
Rules Amended: 581-021-0045, 581-021-0046, 581-024-0205, 581-024-0245, 581-045-0001, 581-049-0020
Subject: Senate Bill 2 (2007) prohibits discrimination against persons based on sexual orientation. Specifically the bill amends a couple of education

related statutes: ORS 338.125 (charter schools) and 659.850 (public education generally). The proposed rule amendments updates state board rules relating to protections from discrimination to reflect the requirements of SB 2.

The amendments to the rules also include inserting color into the state board rules relating to prohibitions on discrimination and changing the word "handicap" to "disability" as needed to reflect preferred terminology. Both of these changes brings the rules into compliance with state statute relating to prohibitions on discrimination.

The rule amendments would apply to schools, school districts, education services districts, private vocational schools and other education programs, services and activities.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-021-0045
Discrimination Prohibited

(1) Discrimination Defined:

(a) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex or sexual orientation;

(b) The words "District, School District" include all common and union high school districts and education service districts and all educational agencies, programs, and services under the jurisdiction of the State Board of Education, except community college districts.

(c) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

(2) "General Prohibition of Discrimination": No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.

(3) "Specific Prohibitions": In providing programs or services to students, a school district shall not, on a discriminatory basis as defined in subsection (1)(a) of this rule:

(a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;

(b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;

(c) Deny any person such aid, benefit, or service;

(d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees;

(f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(4) "Exceptions": These rules shall not affect attendance boundaries, limit placement of students in programs of desegregation, nor supersede any specific statutory requirement for any educational program.

Stat. Auth.: ORS 326 & 659
Stats. Implemented: ORS 326.051 & 659.150
Hist.: 1EB 252, f. & ef. 9-30-76; 1EB 11-1984, f. & ef. 4-17-84; ODE 13-2008, f. & cert. ef. 5-23-08

581-021-0046
Program Compliance Standards

(1) Access to Course Offerings. A school district shall not provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis:

(a) This section does not prohibit grouping of students in any educational program or activity by ability as assessed by objective standards of individual performance;

(b) Where use of an objective standard of measuring skill or progress in an educational program has a discriminatory effect on persons as defined in OAR 581-021-0045, the district shall use appropriate standards which do not have such effect;

(c) This section does not prohibit separating students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, soccer, and other sports the purpose or major activity of which involves bodily contact.

(2) Employment Assistance. A district which actively assists any agency, organization, or person in making employment available to any of its students shall assure itself that such employment is made available without discrimination.

(3) Marital Status. A district shall not discriminate against any student or exclude any student from its educational program or activity including any class or extracurricular activity on the basis of the student's marital status; however the student may request voluntarily to participate in a separate portion of the program or activity of the district.

(4) Athletics. A district which operates or sponsors interscholastic club or intramural athletics shall provide equal athletic opportunity for members of both sexes, all age and ethnic groups, and persons withdisabilities. In determining whether equal opportunities are available, the Superintendent of Public Instruction shall consider among other factors whether the selection of sports and levels of competition effectively accommodate the interests and abilities of all students.

(5) Students Unable to Attend Because of Religious Beliefs. Any student who because of his or her religious beliefs is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that day. The student shall make up the examination or other assignment missed because of such absence. The absence shall not be counted for the purpose of an attendance policy that may result in exclusion, failure, or reduction of grade based upon a certain number of days.

(6) Textbooks and Curriculum Material. Nothing in this rule shall be interpreted as requiring or prohibiting or abridging in any way the use of adopted textbook or curriculum material. However, where materials are found upon investigation to provide discriminatory impact on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status, there should be established resources for employees and

students of the district for supplemental alternative nondiscriminatory material.

(7) Use of Appraisal and Counseling Materials. A district which uses testing or other materials for appraising or counseling students shall not use materials which discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status, or use materials which permit or require different treatment of students on such basis unless such differences cover the same occupation and interest areas and the use of such different material is shown to be essential to the elimination of discrimination. Districts shall develop and use internal procedures for insuring that such materials may not discriminate.

(8) Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

(9) Equal Educational Opportunity Plans. Districts shall develop and implement a plan which assures that all students have equal opportunity to participate in the educational programs and activities and equal access to facilities in the district. Said plan shall include courses and components which provide students with an understanding of the pluralistic realities of their society, including multi-cultural/racial/ethnic education and equity in portraying all classes protected under ORS 659.150. Upon the request of the Superintendent of Public Instruction, districts shall submit copies of such plans and other assurances as are deemed necessary and proper.

(10) Dress Codes. Districts may enforce an otherwise valid dress code or policy, as long the code or policy provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(11) Interpretation of Rules. The Superintendent of Public Instruction may issue written interpretations concerning rules for nondiscrimination upon the written request of parties to a complaint at the district level.

Stat. Auth.: ORS 326 & 659
Stats. Implemented: ORS 326.051 & 659.150
Hist.: 1EB 252, f. & ef. 9-30-76; 1EB 11-1984, f. & ef. 4-17-84; ODE 13-2008, f. & cert. ef. 5-23-08

581-024-0205
Definitions

The following definitions apply to OAR 581-024-0205 through 581-024-0310 unless otherwise indicated by context:

(1) "Annual Report" document prepared by the district and filed by October 31 of each year with the Department. The Annual Report includes both a completed "Self-Appraisal Form" and a "Service and Performance Summary" as identified on forms provided by the Department.

(2) "Assessment": activities designed to secure and organize information describing district performance relative to its own instructional and support service goals;

(3) "Board": State Board of Education;

(4) "Component": a school district whose administrative office is within the district;

(5) "Department": Oregon Department of Education;

(6) "District": an education service district;

(7) "District Board": an education service district board;

(8) "Noncomponent": a school district whose administrative office is outside the district;

(9) "Public Entity" is a unit of local, state, or federal government;

(10) "Private entity" is not a unit of local, state, or federal government and includes, but is not limited to, a not-for-profit or business organization;

(11) "Service": the activities provided by the district in response to statutes, administrative rules, district board directives, resolutions and contracts;

(12) "Service Evaluation": the adopted method, system, or the way by which the effectiveness of service goals is measured;

(13) "Service Goals": statements of desired service outcomes for each district instructional service for the entire system stated in terms of the activities to be implemented;

(14) "Service Improvement": using assessment and needs identification information in making service revisions that reduce needs identified;

(15) "Service Needs Identification": procedures to specify and rank actual and desired outcomes of district services sufficient to warrant considering program revision;

(16) "Sexual orientation": means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth;

(17) "Standard District": a district having met provisions of Division 24 of Board administrative rules;

(18) "Substandard District": a district not meeting the provisions of Division 24 of Board administrative rules; and

(19) "Superintendent": State Superintendent of Public Instruction.

Stat. Auth.: ORS 334
Stats. Implemented: ORS 334.125
Hist.: 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06; Administrative correction 7-20-06; ODE 13-2008, f. & cert. ef. 5-23-08

581-024-0245
Staff

(1) Each district shall employ staff as needed to accomplish the goals of the district as; adopted by the district board, provided for in its annual budget, required in ORS 342.513 to 342.985, 653.310 to 653.340 and chapter 659.

(2) Each district shall assign:

(a) Licensed personnel in accordance with OAR Division 584 Rules of Licensure; and

(b) All personnel in accordance with their position descriptions.

(3) Each district shall maintain personnel policies to include:

(a) Assurances that equal employment opportunities for all persons are provided regardless of age, disability, national origin, race, color, marital status, religion, sex or sexual orientation; and

(b) Liaison between the district board and its employees, described by means of a chart or written statement.

(4) Personnel policies shall be provided to all employees and made available to the public.

Stat. Auth.: ORS 334
Stats. Implemented: ORS 334.125
Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 15-1994, f. & cert. ef. 10-3-94; ODE 13-2008, f. & cert. ef. 5-23-08

581-045-0001
Definitions

The following definitions apply to OAR 581-045-0006 through 581-045-0210, unless otherwise indicated by the context:

(1) "Advertising" means any form of public notice used in recruiting and promoting activities, however disseminated, including but not limited to print media, catalogs, and other school publications, signs, mailing pieces, radio or television ads, audiovisual material, and the internet on behalf of a licensed school.

(2) "Ability to benefit" is a determination made by the school through some form of assessment (e.g., entrance examination) that indicates the student has a reasonable chance to succeed in the program and be employed in the profession for which the student is preparing.

(3) "Esthetics" has the meaning given in ORS 690.005.

(4) "Agent" has the meaning given in ORS 345.010(1).

(5) "Application" means a form, separate from the enrollment agreement, which is submitted by an applicant prior to the signing of the enrollment agreement and evaluated by the school for admission purposes. Schools may charge a non-refundable application fee; however, the fee must be clearly identified on the application.

(6) "Application fee" means any fee, however named, covering those expenses incurred by a school in evaluating admission of prospective students. At the school's option, the application fee may be non-refundable. The school shall not charge an application fee of more than $25.00.

(7) "Approved" means accepted by the State Board of Education or by the Superintendent in matters relating to school licensing requirements.

(8) "Assessment" means a written, oral, and/or hands-on evaluation of an applicant's progress in the educational program.

(9) "At-risk" means the school demonstrates a pattern or history of one or more of the following conditions, that the Superintendent determines, may cause potential serious problems for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility or reporting;

(b) Misrepresentation;

(c) Frequent substantiated complaints filed with the Department;

(d) A decrease in enrollment from the previous reporting period of 50 percent or more or 25 students, whichever is greater;

(e) Staff turnover from the previous reporting period of 50 percent or more or three staff, whichever is greater; and

(f) Conditions listed in subsections (9) (d) and (e) of this rule, caused by unusual circumstance or reason, shall be evaluated by the Superintendent and exceptions may be granted.

(10) "Auxiliary facility" means a facility that does not use or list its address as a school location and:

(a) Absorbs a temporary overload that the principal facility cannot accommodate; or

(b) Provides a specialized training facility away from the principal school location; or

(c) Provides training under contract that is not open to general enrollment; or

(d) Is a site approved by the Department of Education for teaching a short-term course that is taught by registered teachers from the principal facility.

(11) "Barbering" has the meaning given in ORS 690.005.

(12) "Board" means the State Board of Education.

(13) "Bona fide organization or group" means any body or entity that is nationally chartered or recognized by a national or state educational/occupational policy board that has operated or functioned in good faith without fraud or deceit for at least 25 years.

(14) "Chairperson" means the person who is responsible for overseeing the business of the advisory committee.

(15) "Class" means a scheduled meeting of persons for instructional purposes.

(16) "Clinic lab" means a place where students perform assigned instructional tasks identified in the approved curriculum on models or the general public.

(17) "Completion" means the student has satisfactorily finished all the requirements of the program in which enrolled, has fulfilled the terms of the enrollment agreement, and has been awarded an appropriate certificate, diploma, or completion document.

(18) "Continuing education" means the enrollment in and completion of ongoing, Department-approved instruction, outside the normal teaching schedule, which upgrades a teacher's skills and knowledge with the intent of making the teacher more proficient and current in subject matter taught.

(19) "Course" means an aggregation of classes to achieve a completed set of competencies.

(20) "Department" means the Oregon Department of Education.

(21) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex or sexual orientation.

(22) "Distance learning instruction" means education provided by written correspondence or any electronic medium for students enrolled in a private career school in pursuit of an identified occupational objective, but not attending classes at an approved school site or training establishment.

(23) "Enrollment" means a student agrees to the purchase of a course or program of instruction from a school and signs an enrollment agreement, instrument or note, however named that commits both the student and the school to a legal and binding obligation.

(24) "Fiscal reporting period" means the period of time for which the school provides the required financial information. The fiscal reporting period is identified by the school owner upon initial license application and must remain consistent unless a written request for a change is approved by the Superintendent. The fiscal reporting period may be the calendar year or another 12-month time period.

(25) "Fund" means the private career school Tuition Protection Fund (TPF).

(26) "Gross tuition income" means all direct tuition charges from programs for which the school is licensed under OAR 581-045-0001 through 581-045-0210, including any laboratory fee. Total gross tuition income does not include:

(a) Tuition refund;

(b) Registration and application fees; or

(c) Costs for books, supplies, tools, and equipment purchased by students.

(27) "Hair design" has the meaning given in ORS 690.005.

(28) "In default" is defined in ORS 345.115(5) as "when a course or program is discontinued or canceled or the school closes prior to completion of contracted services."

(29) "License" means a license to operate a private career school.

(30) "Nail technology" has the meaning given in ORS 690.005.

(31) "On-site review" means a visit to the school by authorized Department staff who may review the facilities, classrooms, and school records; talk with students, staff, and administrators; and determine whether the school is in compliance with Oregon law.

(32) "Operating/operation" means any form of marketing, advertising, instruction, recruitment, or any other activity regulated under ORS Chapter 345 and OAR 581-045-0001 through 581-045-0210.

(33) "Placement" means the student has been employed in the occupation for which trained.

(34) "Probation" means that a school has been officially notified by the Superintendent that it has deficiencies that must be corrected within a specified time.

(35) "Program" means an aggregation of courses to meet an identified occupational objective.

(36) "Program advisory committee" means a representative group appointed by the school, which advises the school ownership and administration.

(37) "Program improvement plan" means a written outline or plan designed to describe how the school will resolve or comply with violations of state rule or regulation assessed by the Superintendent and/or correct any deficiencies identified by the Superintendent.

(38) "Pro rata" means in accordance with a fixed proportion.

(39) "Published Class Schedule" (for the purpose of calculating tuition charges) means the period of time between the commencement of classes and the student's last date of attendance as offered by the school and scheduled by the student.

(40) "Recruiting" means personally soliciting or attracting a person or persons by a school or its agent(s) with the intention of actively pursuing enrollment in the school. Recruiting does not include leaving materials at or near an office or other site for a person to pick up of his or her own accord or handing a brochure or other materials to a person.

(41) "Registration" means the process by which directors, agents, or teachers either request registration by the Superintendent to teach at the school or notify the Superintendent of their appointment of an agent to represent the school.

(42) "Registration fee" means any fee, however named, covering those expenses incurred by a school in processing the student enrollment agreement and establishing a student records system and so identified on the student enrollment agreement.

(43) "Reporting period" means the period from July 1 of one year to June 30 of the next year on which schools shall base all individual program student completion and placement reporting that must be submitted to the Department. The school's fiscal year may be for the same period, the calendar year, or another 12-month time period.

(44) "Resident instruction" means education provided at an approved school site or training establishment for students enrolled in and attending classes at the school facility in pursuit of an identified occupational objective.

(45) "Revocation" as referenced in OAR 581-045-0012 means that the Superintendent has notified an employee of a licensed private career school that because of violations of OAR 581-045-0012(9)(a)–(c) the Department's approval of the employee's registration is permanently withdrawn. When notice of revocation is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under ORS 183.310(2).

(46) "Revoke" means the Superintendent terminates the school license. When the license is revoked, the school is not authorized to continue operating. Probation or suspension may, but is not required to, precede revocation.

(47) "Self-directed instruction" is a course/program with instructional materials and curriculum that is sufficient in design and scope to prepare a student for the program's occupational objectives. These objectives can be achieved without provision for regular interaction either by mail, telephone, or personally between the student and faculty employed by the school and do not require the school to measure attendance or lesson completion for satisfactory progress.

(48) "School" has the meaning given in ORS 345.010(4).

(49) "Short term course" means a course no longer than 16 clock hours in duration that is offered to prepare a student for a state examination or licensure, which is required to enter a profession.

(50) "State advisory committee" means a representative, statutory advisory committee appointed by the Superintendent of Public Instruction, consisting of members who shall serve for terms of three years ending June 30.

(51) "Structured work experience or externship" means a worksite educational activity that correlates the value of classroom training and

on-site job performance, is an integral part of the student's training plan, and is supervised/evaluated by appropriate school personnel.

(52) "Superintendent" means the State Superintendent of Public Instruction or qualified designee.

(53) "Suspension" as referenced in OAR 581-045-0012 means that the Superintendent has notified an employee of a licensed private career school that because of violations of OAR 581-045-0012(9)(a)–(c) the Department's approval of the employee's registration is temporarily withdrawn. When notice of suspension is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under ORS 183.310(2).

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(55) "Teachout" means a defaulting school or the Department makes provisions for students enrolled at the time of the default to complete a comparable program at no additional cost beyond the original enrollment agreement with the defaulting school. Teachout arrangements, if made by the defaulting school, shall be approved in advance by the Superintendent and, if ongoing, approved annually by the Superintendent.

(56) "Transcript" means a written record that shall include, but is not limited to, name and address of student, first and last date of attendance, all programs or courses undertaken, grades achieved, whether the courses or programs were successfully completed, and signature of a school official.

(57) "Tuition" means money or other compensation paid or credited to a school by a student or on behalf of a student that is applied to the costs of instruction and training actually received or to be received by the student.

(58) "Withdrawal fee" means any fee, however named, covering those expenses incurred by a school in processing student paperwork relating to program changes (i.e., course additions/drops or transfers) or withdrawal from school and so identified on the student enrollment agreement.

Stat. Auth.: ORS 345.010

Stats. Implemented: ORS 345.030 & 345.325

Hist.: 1 EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07; ODE 13-2008, f. & cert. ef. 5-23-08

581-045-0001
Definitions

The following definitions apply to OAR 581-045-0006 through 581-045-0210, unless otherwise indicated by the context:

(1) "Advertising" means any form of public notice used in recruiting and promoting activities, however disseminated, including but not limited to print media, catalogs, and other school publications, signs, mailing pieces, radio or television ads, audiovisual material, and the internet on behalf of a licensed school.

(2) "Ability to benefit" is a determination made by the school through some form of assessment (e.g., entrance examination) that indicates the student has a reasonable chance to succeed in the program and be employed in the profession for which the student is preparing.

(3) "Esthetics" has the meaning given in ORS 690.005.

(4) "Agent" has the meaning given in ORS 345.010(1).

(5) "Application" means a form, separate from the enrollment agreement, which is submitted by an applicant prior to the signing of the enrollment agreement and evaluated by the school for admission purposes. Schools may charge a non-refundable application fee; however, the fee must be clearly identified on the application.

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(7) "Approved" means accepted by the State Board of Education or by the Superintendent in matters relating to school licensing requirements.

(8) "Assessment" means a written, oral, and/or hands-on evaluation of an applicant's progress in the educational program.

(9) "At-risk" means the school demonstrates a pattern or history of one or more of the following conditions, that the Superintendent determines, may cause potential serious problems for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility or reporting;

(b) Misrepresentation;

(c) Frequent substantiated complaints filed with the Department;

(d) A decrease in enrollment from the previous reporting period of 50 percent or more or 25 students, whichever is greater;

(e) Staff turnover from the previous reporting period of 50 percent or more or three staff, whichever is greater; and

(f) Conditions listed in subsections (9) (d) and (e) of this rule, caused by unusual circumstance or reason, shall be evaluated by the Superintendent and exceptions may be granted.

(10) "Auxiliary facility" means a facility that does not use or list its address as a school location and:

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(44) "Resident instruction" means education provided at an approved school site or training establishment for students enrolled in and attending classes at the school facility in pursuit of an identified occupational objective.

(45) "Revocation" as referenced in OAR 581-045-0012 means that the Superintendent has notified an employee of a licensed private career school that because of violations of OAR 581-045-0012(9)(a)-(c) the Department's approval of the employee's registration is permanently withdrawn. When notice of revocation is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under ORS 183.310(2).

(46) "Revoke" means the Superintendent terminates the school license. When the license is revoked, the school is not authorized to continue operating. Probation or suspension may, but is not required to, precede revocation.

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(49) "Short term course" means a course no longer than 16 clock hours in duration that is offered to prepare a student for a state examination or licensure, which is required to enter a profession.

(50) "State advisory committee" means a representative, statutory advisory committee appointed by the Superintendent of Public Instruction, consisting of members who shall serve for terms of three years ending June 30.

(51) "Structured work experience or externship" means a worksite educational activity that correlates the value of classroom training and on-site job performance, is an integral part of the student's training plan, and is supervised/evaluated by appropriate school personnel.

(52) "Superintendent" means the State Superintendent of Public Instruction or qualified designee.

(53) "Suspension" as referenced in OAR 581-045-0012 means that the Superintendent has notified an employee of a licensed private career school that because of violations of OAR 581-045-0012(9)(a)–(c) the Department's approval of the employee's registration is temporarily withdrawn. When notice of suspension is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under ORS 183.310(2).

(54) "Suspend" means the Superintendent has notified a school that because of deficiencies, it may not advertise, recruit, enroll students, or begin instruction of new students, but may remain open to complete training of currently enrolled students. Probation may, but is not required to precede suspension.

(55) "Teachout" means a defaulting school or the Department makes provisions for students enrolled at the time of the default to complete a comparable program at no additional cost beyond the original enrollment agreement with the defaulting school. Teachout arrangements, if made by the defaulting school, shall be approved in advance by the Superintendent and, if ongoing, approved annually by the Superintendent.

(56) "Transcript" means a written record that shall include, but is not limited to, name and address of student, first and last date of attendance, all programs or courses undertaken, grades achieved, whether the courses or programs were successfully completed, and signature of a school official.

(57) "Tuition" means money or other compensation paid or credited to a school by a student or on behalf of a student that is applied to the costs of instruction and training actually received or to be received by the student.

(58) "Withdrawal fee" means any fee, however named, covering those expenses incurred by a school in processing student paperwork relating to program changes (i.e., course additions/drops or transfers) or withdrawal from school and so identified on the student enrollment agreement.

Stat. Auth.: ORS 345.010
Stats. Implemented: ORS 345.030 & 345.325
Hist.: 1 EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07; ODE 13-2008, f. & cert. ef. 5-23-08; ODE 13-2008, f. & cert. ef. 5-23-08

581-049-0020
Standards

(1) The standards and accreditation process in this rule pertain specifically to EMT programs offered by community colleges (including satellite courses and programs), and licensed private vocational schools.

(2) Each EMT course shall follow, without substantial variation, the OHD-EMS prescribed curriculum for the level of EMT course being presented. The curriculum consists of three components: Didactic instruction, including laboratory skills; supervised clinical experience in health care facilities; and supervised field internship. Didactic instruction and supervised clinical experience are required for Basic and Intermediate level EMT courses. A supervised field internship is required as well as didactic instruction and supervised clinical experience for EMT paramedic level courses. Each curriculum component shall comply with all OHD-EMS requirements for the particular level of EMT certification involved. All psycho-motor skills shall be taught in accordance with the Health Division/OHD-EMS EMT Skills Manual:

(a) Didactic Instruction: Each EMT course shall have a written planned course statement that contains course goals and objectives stated in terms of the competencies students will be expected to achieve upon successful completion of the course;

(b) Clinical Experiences: Clinical affiliations shall be established and confirmed in written affiliation agreements between the teaching institution and hospitals and other institutions and agencies that provide clinical experiences for students under appropriate medical direction and clinical supervision:

(A) Goals and identified competencies to be attained shall be written for each clinical rotation site. Students shall be provided a copy of the clinical rotation site goals and competencies prior to each clinical experience;

(B) Students shall be assigned to clinical settings where experiences are educationally efficient and effective in achieving the program's goals and objectives;

(C) Students in clinical settings shall be supervised by appropriate medical personnel or by an instructor from the program as outlined in the

written affiliation agreement. The ratio of students to instructors in the clinical facilities shall be adequate to ensure effective learning.

(c) Field Internship: A field internship shall be established for each student for whom such is required by OHD-EMS. The internship shall meet requirements established by OHD-EMS and defined in OAR 333-265-0010(f)(C)(iii) effective July 1, 1994.

(A) The school shall enter into written agreements for clinical experiences and field internships that provide sufficient clinical experiences and field internships to permit every student enrolled to complete these requirements within the timeframe of the approved course;

(B) All field internships will occur within an emergency medical system which demonstrates medical accountability. A clinical preceptor shall be assigned to supervise each student intern. The preceptor's qualifications shall meet guidelines set by OHD-EMS;

(C) Written goals and competencies to be attained shall be established for all field internships. Copies shall be provided the student and the student's assigned preceptor. These competencies shall meet requirements of OHD-EMS as stated in OAR 333-265-0010 effective July 1, 1994.

(3) Program Administrator: Each program shall have a qualified program administrator primarily responsible for managing all aspects of the program, whose responsibilities include, but are not limited to, the organization, administration, and evaluation of the program. Acquisition of adequate resources and staff to assure a quality program is a primary responsibility of the program administrator.

(4) The intent of section (3) of this rule is to assure that appropriate officials of the sponsoring teaching institution are directly involved in program planning and management and to provide OHD-EMS and OPTE-OCCS with a single focus for resolution of problems arising as a result of EMT program delivery.

(5) The program administrator shall be a senior manager or administrative officer with general managerial responsibility who has training and experience in education administration and evaluation (i.e., dean, associate dean, administrator, or associate administrator).

(6) Course Director: Each course shall have a course director who shall be the principle teacher for the course. The course director shall be responsible for all aspects of course planning and delivery. The course director shall meet the requirements as outlined in OAR 333-265-0020(f)(C)(iii) effective July 1, 1994.

(7) Guest Lecturers: These are individuals who do not regularly assist in the delivery of EMT education and training who present one or more lectures on specific topics in which they possess personal expertise. Guest lecturers do not need to have any particular level of certification. It is the responsibility of the course director to establish that each guest lecturer possesses the necessary expertise and teaches in compliance with all course standards.

(8) Medical Director: Each EMT education and training program shall have a medical director, who shall advise the program administrator and course director on medical aspects of the EMT program. The medical director shall currently be approved by OHD-EMS as an EMT supervising physician.

(9) Continuing Education for Faculty and Staff. It is recommended that financial support be provided for faculty education required to keep mandatory certifications current.

(10) Financial Resources: The operational budget for the program shall be sufficient to maintain the continuous operation of the EMT program.

(11) Facilities: Classroom, laboratories, administrative, and faculty offices shall be provided with sufficient space to accommodate the number of students enrolled in the program and the program faculty:

(a) Classrooms shall be clean and have adequate lighting, ventilation, and storage for instructional materials and equipment. Furniture should be in good repair and comfortable with appropriate writing surfaces;

(b) Laboratory space shall be available for students to practice skills. This may be the same room as the classroom, providing there is adequate space for students to perform the required skills (e.g., CPR, patient packaging, splinting, etc.). Floors, where skills are practiced, shall be covered with carpet or other appropriate protective materials. Running water shall be available in the class/lab facility. The room should meet all Oregon Occupational Safety and Health Administrative standards for safety;

(c) Each classroom site shall have sufficient toilet facilities to reasonably accommodate the number of students enrolled in the course;

(d) Administrative staff and faculty shall be provided adequate office space to manage the program, keep adequate records and instructional materials, and prepare lesson plans. Space should also be provided for confidential faculty/student conferences.

(12) Instructional Aids, Supplies, and Materials: Sufficient up-to-date instructional aids, supplies, and materials shall be provided to facilitate learning for the number of students in the program and the level of EMT course being offered:

(a) Teaching aids and instructional materials shall be readily available to the instructor;

(b) Adequate AV materials and equipment shall be available for instructor and student use;

(c) Independent study areas with TV monitors/audio outlets shall be available for student use as needed for make-up work and independent study;

(d) The budget shall provide for supplies and annual updating of instructional materials.

(13) Equipment: Each EMT course shall be supported by the prescribed quantity of equipment necessary to support the level of EMT education and training being provided. Required equipment shall be specified by OHD-EMS:

(a) Equipment shall be technologically up-to-date and readily accessible to faculty and students;

(b) All equipment shall be kept in good repair;

(c) An annual and long-term budget for capital equipment shall be in place to maintain and provide for replacement of equipment.

(14) Support Services: Support services necessary to ensure student success shall be made available to students in the EMT program. These services include, but are not limited to:

(a) A library with appropriate up-to-date periodicals and books open during hours which will provide maximum accessibility to students;

(b) Counseling staff available for academic and career planning;

(c) Tutoring assistance available on an "as needed" basis;

(d) Funding and staff time available for student recruitment, selection, and placement procedures. It is required that students pass reading and math placement tests at appropriate levels for each course prior to acceptance into the program.

(15) Admission Policies and Procedures: Admission of students shall be made in accordance with clearly defined and published practices of the institution. Specific academic and technical requirements for admission shall also be clearly defined and published. The standards and prerequisites shall be made known to all potential program applicants.

(16) Program Information: Accurate information regarding program requirements, tuition and fees, institutional and programmatic policies, procedures and supportive services shall be available upon request to all prospective students and be provided to all enrolled students. It is recommended that this information be compiled in an EMT student handbook.

(17) Program Descriptions: A description of each EMT course, a statement outlining course competencies, course outlines, class and laboratory schedules, clinical and field internship experience schedules, and teaching plans shall be on file and available to candidates and enrolled students;

(18) Equal Opportunity: The program shall comply with ORS 659.850 and shall not discriminate with respect to race, color, religion, sex, sexual orientation, marital status, age, disability, or national origin.

(19) Evaluation: Each approved course shall provide the number of written and practical examinations prescribed by OHD-EMS. The content of examinations for each level of EMT course shall be prescribed by OHD-EMS:

(a) Each approved course shall culminate in written and practical certification examinations prescribed by the OHD-EMS. For academic purposes, a teaching institution may administer its own final written and practical examination prior to the conduct of OHD-EMS certification examinations;

(b) The written certification examination shall be administered by a proctor provided by the teaching institution. The proctor shall be subject to the approval of the OHD-EMS, shall not be certified as an EMT at any level, and shall not be otherwise involved in the delivery of EMT training;

(c) Evaluators for the final practical examination shall be individuals meeting the requirements prescribed by OHD-EMS to serve as final practical examination evaluators. An OHD-EMS representative shall be present at final practical examinations and shall provide evaluation instruments to be used in the conduct of all final practical evaluations.

(20) Job Search and Placement: Students who successfully complete the program shall be provided access to job search and placement services.

(21) Advisory Committee: Each program shall have an advisory committee to provide guidance and information regarding local community practices and needs:

(a) The advisory committee shall consist of representatives from local employers of EMT personnel, current or former students, and other community members as appropriate. The medical director shall be a member of the advisory committee and serve as a primary source of information. A roster of the advisory committee members, their place of employment and phone numbers shall be kept on file and easily accessible;

(b) The advisory committee shall meet a minimum of three times each year and minutes of the meeting shall be recorded and kept on file.

(22) A safe working and learning environment shall be provided to all students and staff so that students learn to be safety conscious in the classroom and carry that consciousness into practice in clinical and internship experiences and ultimately into the profession:

(a) Safety Policy: The teaching institution shall have a safety policy that meets all state and federal requirements. The teaching institution shall identify an administrator who is responsible for monitoring the safety policy and assures that regular safety inspections are made and documented;

(b) Instructional Activities: All instructional activities (i.e., didactic, clinical, and internship) shall be carried on in accordance with the Oregon Safe Employment Act, OR-OSHA standards, and ORS 656.046 effective January 1, 1995, which requires coverage of persons in college work experience and vocational educational programs;

(c) Curriculum: Occupational safety shall be an integral part of the curriculum;

(d) Insurance: Each student enrolled in the program shall be covered by professional liability insurance in the amount of not less than $1,000,000 per occurrence. Copies of insurance policies documenting the coverage shall be on file at the institution.

(23) The institution shall maintain complete, accurate student records in a safe, secure place within the educational institution:

(a) The following records shall be maintained until the student has been certified by OHD-EMS at the level corresponding to the education program or for a minimum of five years following the student's enrollment in the program:

(A) Student admission into the program;

(B) Class attendance;

(C) Evidence of competencies attained throughout the program;

(D) Copies of examinations and assessments throughout the program;

(E) Evidence of satisfactory completion of all didactic, clinical, and field internship requirements.

(b) A record of all grades and credits earned by each student shall be kept permanently by the institution;

(c) All records shall be confidentially maintained in accordance with Family Education Rights and Privacy Act.

(24) To assure a high quality program it is essential that all aspects of the program be evaluated on both an ongoing and periodic basis:

(a) The teaching institution shall establish processes to evaluate on an ongoing basis the effectiveness of the instructional program. These will include gathering evaluative data from students, administrators, clinical supervisors, intern preceptors and advisory committee members. Follow-up surveys of graduates and the employers of graduates shall be conducted to evaluate the effectiveness of the curriculum, teaching, and the services offered by the institution. Data gathered through these processes should be analyzed and utilized for program improvement;

(b) Every EMT program shall be evaluated through a process of accreditation at least once every five years. This process shall occur as outlined in OAR 581-049-0030 effective (date these rules are adopted).

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 823.130 - 823.150
Hist.: EB 22-1993, f. & cert. ef. 6-2-93; EB 28-1993, f. & cert. ef. 9-29-93; EB 19-1995, f. & cert. ef. 7-11-95; ODE 13-2008, f. & cert. ef. 5-23-08

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Rule Caption: Revises description of alcohol and drug prevention program provided by school districts.
Adm. Order No.: ODE 14-2008
Filed with Sec. of State: 5-23-2008
Certified to be Effective: 5-23-08
Notice Publication Date: 4-1-2008
Rules Amended: 581-022-0413
Subject: In 2008, SB 1068 directed school districts to include information on anabolic steroids and performance enhancing substances, including prevention strategies, strength-building alternatives and the understanding of health food labels in health and physical education curricula for kindergarten through grades 12 students. Rules will provide districts direction on the inclusion in health and physical education curricula.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-0413
Prevention Education Programs in Drugs and Alcohol

(1) Each school district shall develop a comprehensive plan for alcohol and drug abuse prevention program which shall include, but not limited to:

(a) Instruction in the effects of tobacco, alcohol, drugs, including anabolic steroids, performance-enhancing and controlled substances as an integral part of the district's K-12 comprehensive health education program. In addition, at least annually, all high school students, grades 9-12 shall receive age-appropriate instruction about drug and alcohol prevention

(A) The age-appropriate curriculum for this instruction shall:

(i) Emphasize prevention strategies;

(ii) Be reviewed and updated annually to reflect current research; and

(iii) Be consistent with State Board adopted Health Education Academic Content Standards.

(B) Basic information shall include:

(i) The effects of alcohol, tobacco and other drug use, including anabolic steroids, performance-enhancing and controlled substances

(ii) All laws relating to the use, especially by minors, of alcohol and other illegal drugs; and

(iii) The availability of school and community resources.

(C) The instructional program shall include activities which will assist students in developing and reinforcing skills to:

(i) Understand and manage peer pressure;

(ii) Understand the consequences of consuming alcohol and other drugs;

(iii) Make informed and responsible decisions; and

(iv) Motivate students to adopt positive attitudes towards health and wellness.

(b) A public information program for students, parents, and district staff; and

(c) Policies, rules, and procedures which:

(A) Include a philosophy statement relating to drug-free schools and the established tobacco-free policies and procedures for students, staff and visitors.

(B) Define the nature and extent of the district's program, including a plan to access and use federal funds;

(C) State that alcohol, tobacco, and other drug use by student is illegal and harmful;

(D) In accordance with OAR 581-021-0050 and 581-021-0055, indicate the consequences for using and/or selling alcohol and other drugs, including the specific rule of the school as it relates to law enforcement agencies;

(E) Describe the district's intervention and referral procedures, including those for drug-related medical emergencies;

(F) Indicate clearly that the school district's jurisdiction includes all school sponsored events including student activities; and

(G) Are reviewed and updated annually.

(2) The district's drug and alcohol prevention and intervention program shall be approved by the school district board after consultation from parents, teachers, school administrators, local community agencies, and persons from the health or alcohol and drug service community who are knowledgeable of the latest research information.

(3) Staff development in the district shall:

(a) Inform all staff of the district plan and their responsibilities within that plan; and

(b) Provide alcohol and drug abuse prevention education to all staff.

Stat. Auth.: ORS 326.051, 336.235
Stats. Implemented: ORS 336.067, 336.222
Hist.: EB 30-1989, f. & cert. ef. 10-24-89; ODE 14-2008, f. & cert .ef. 5-23-08

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Rule Caption: Prescribes requirements for modified diploma and alternative certificate for high school students.
Adm. Order No.: ODE 15-2008
Filed with Sec. of State: 5-23-2008
Certified to be Effective: 5-23-08
Notice Publication Date: 3-1-2008
Rules Adopted: 581-022-1134, 581-022-1135

Subject: The rules direct district school boards and public charter school governing boards with jurisdiction over high school programs to award modified

diplomas to qualifying students who meet state requirements. The rules prescribe the required academic content areas, courses, numbers of credits, notification and other requirements. The rules also direct school districts and public charter schools to make an alternative certificate available to students who do not meet the requirements for a diploma or modified diploma.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-1134
Modified Diploma

(1) Definitions. As used in this rule:

(a) "Documented history" means evidence in the cumulative record and education plans of a student that demonstrates the inability over time to maintain grade level achievement even with appropriate modifications and accommodations.

(b) "Instructional barrier" means a significant physical, cognitive or emotional barrier that impairs a student's ability to maintain grade level achievement.

(c) "Modified course" means a course that has been systematically changed or altered for a student only after reasonable alternative instructional strategies (e.g. accommodations, remediation) are exhausted.

(2) Each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma to students who have demonstrated the inability to meet the full set of academic content standards even with reasonable accommodations but who fulfill all state requirements as described in this rule and all applicable local school district requirements as described in district school board policies or public charter school requirements as described in school policies.

(3)(a) Except as provided in paragraph (b) or (c) of this section, a school district or public charter school shall grant eligibility for a modified diploma to a student who has:

(A) A documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers inherent in the student; or

(B) A documented history of a medical condition that creates a barrier to achievement.

(b) Students currently engaged in the use of illegal drugs are not eligible for a modified diploma if the significant learning and instructional barriers are due to the use of illegal drugs.

(c) Students currently engaged in the illegal use of alcohol are not eligible for a modified diploma if the significant learning and instructional barriers are due to the alcohol abuse, regardless of whether that student is disabled under Section 504 on the basis of alcoholism.

(d) Notwithstanding paragraph (b) and (c) of this section, a school district or public charter school may grant eligibility for a modified diploma to a student who is no longer engaging in illegal use of drugs or alcohol if the student:

(A) Has successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaged in the illegal use of drugs or alcohol; or

(B) Has been rehabilitated successfully and is no longer engaged in the illegal use of drugs or alcohol; or

(C) Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or alcohol.

(4)(a) A school district or public charter school shall determine which school teams shall decide if a student will work toward obtaining a regular diploma, modified diploma or alternative certificate. A student's school team must include a parent or guardian of the student. In the case of a student receiving special education and related services the resident school district of a public charter school student shall determine the school team for that student.

(b) Except as provided in subsection (e) of this section, a student's school team shall decide that a student should work toward a modified diploma no earlier than the end of the 6th grade and no later than 2 years before the student's anticipated exit from high school.

(c) School district and public charter schools shall notify students and their parents or guardians of the availability of the modified diploma in the fifth grade and shall ensure that parents or guardians are involved in the decision to pursue a modified diploma for a student. After students working toward a modified diploma complete the 8th grade modified diploma information shall be reviewed annually with the parent or guardian of a student.

(d) A student's school team may formally decide to revise a modified diploma decision.

(e) A student's school team may decide that a student who was not previously working towards a modified diploma should work toward a modified diploma when a student is less than 2 years from anticipated exit from high school if the documented history of the student described in section (3) of this rule has changed.

(5) Unit of credit requirements for students graduating with a modified diploma:

(a) To receive a modified diploma a student must earn 24 units of credit, between grade 9 and the end of their high school career with at least 12 of those credits to include:

(A) English Language Arts — 3;

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences (which may include history, civics, geography and economics (including personal finance)) — 2;

(E) Health Education — 1;

(F) Physical Education — 1; and

(G) Career Technical Education, The Arts or Second Languages (units may be earned in any one or a combination) — 1.

(b) School districts and public charter schools shall be flexible in awarding the remaining 12 units of credit. These credits must be awarded to meet the needs of the individual student as specified in the education plan of the student with the expectations and standards aligned to the appropriate grade level academic content standards. These credits may include:

(A) Additional core credits described in paragraph (a) of this section;

(B) Professional technical education;

(C) Electives; and

(D) Career development.

(c) Students may earn units of credit through regular education with or without accommodations or modifications and through modified courses.

(d) Students shall have the option to earn credit for demonstrating proficiency. A student may be given credit for successful demonstration of knowledge and skills that meets or exceeds defined levels of performance. Students may demonstrate proficiency through classroom work or documentation of learning experiences outside of school, or through a combination of these means.

(e) Students shall have access to literacy instruction until the completion of school.

(f) School districts and public charter schools shall ensure that students have access to needed courses, modifications and supports to pursue a modified diploma and to progress in the general education curriculum.

(g) A school district or public charter school may not require a student to earn more than 24 units of credit to receive a modified diploma.

(6) A school district or public charter school shall grant credit toward a modified diploma only for courses that contain substantial academic content. A school district or public charter school shall grant credit for a modified diploma through a continuum of instruction beginning at basic skills and progressing through high level skills.

(7) A school district or public charter school shall award a regular diploma under OAR 581-022-1130 if all requirements for a regular diploma are met. Completion of one or more modified courses shall not prohibit a student from earning a regular diploma.

(8) A school district or public charter school shall grant credit toward a modified diploma according to individual student needs across academic content areas including applied, consumer, academic, or knowledge and skill development.

(9) Each student shall develop an education plan and build an education profile as provided under OAR 581-022-1130.

(10) A school district or public charter school shall inform the student and parent or guardian of the student if the courses in grades 9-12 have been modified for an individual student.

(11) A school district or public charter school shall provide transcripts which clearly identify modified courses that do not count toward the regular diploma but that do count toward a modified diploma.

(12) Each student shall build a collection of evidence, or include evidence in existing collections, to demonstrate extended application of the standards as defined in OAR 581-022-0102;

(13) Each student receiving a modified diploma shall have the option of participating in the high school graduation ceremony with the members of their class receiving a regular high school diploma.

(14)(a) The requirements of this rule for a modified diploma apply to all students who enter 9th grade on or after July 1, 2009.

(b) If a student enters 9th grade prior to July 1, 2009, the student's team shall decide whether the student must meet the requirements of this rule to receive a modified diploma. A school district or public charter school may award a student who enters 9th grade prior to July 1, 2009 a modified diploma if the student meets the requirements for a modified diploma specified by the district or school and the student's team.

Stat. Auth.: ORS 329.451
Stats. Implemented: ORS 329.451
Hist.: ODE 15-2008, f. & cert. ef. 5-23-08

581-022-1135
Alternative Certificate

(1) School districts and public charter schools shall make an alternative certificate available to students as an alternative for students who do not obtain the regular high school diploma or modified diploma.

(2) Each district school board or public charter school governing board with jurisdiction over high school programs shall define criteria for an alternative certificate and shall award an alternative certificate to those students who have met the criteria requirements as described in district school board policies.

(3) Each student receiving an alternative certificate shall have the option of participating in the high school graduation ceremony with the members of their class receiving a regular high school diploma.

Stat. Auth.: ORS 329.451
Stats. Implemented: ORS 329.451
Hist.: ODE 15-2008, f. & cert. ef. 5-23-08

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Oregon Health Licensing Agency
Chapter 331

Rule Caption: Establishment of qualification requirements, practice standards and fees for certified clinical and associate sex offender therapists.
Adm. Order No.: HLA 2-2008
Filed with Sec. of State: 5-27-2008
Certified to be Effective: 6-1-08
Notice Publication Date: 4-1-2008
Rules Adopted: 331-800-0010, 331-800-0020, 331-810-0020, 331-810-0030, 331-810-0035, 331-810-0040, 331-810-0050, 331-810-0055, 331-820-0010, 331-820-0020, 331-830-0005, 331-830-0010, 331-830-0020, 331-840-0010, 331-840-0020, 331-840-0030, 331-840-0040, 331-840-0050, 331-840-0060, 331-850-0010
Rules Repealed: 331-800-0010(T), 331-800-0020(T), 331-810-0020(T), 331-810-0030(T), 331-810-0035(T), 331-810-0040(T), 331-820-0010(T), 331-820-0020(T), 331-850-0010(T)
Subject: Passage of HB 3233 (Oregon Laws 2007, chapter 841) by the 2007 Legislature created the Sex Offender Treatment Board within the Oregon Health Licensing Agency, and establishing a Title Act for certifying clinical and associate sex offender therapists. The law became effective July 27, 2007. Board members were appointed by the Governor, confirmed by the Senate, and the Board held an initial meeting on November 30, 2007 to start the process of developing operating rules.

The agency, in consultation with the Board, adopted temporary operating rules that became effective, March 15, 2008. The rules address definitions, fee structure, requirements for application and certification of clinical and associate level therapists, criteria for qualifying individuals who are currently providing sex offender therapy for certification under a one-year time limitation (grandfather provision), and reciprocal qualification criteria. Adoption of the temporary rules was necessary to initiate the certification of qualified applicants and to implement regulatory and administrative objectives and fund the program; permanent adoption is needed to sustain the rule requirements.
Rules Coordinator: Patricia C. Allbritton—(503) 373-2088

331-800-0010
Definitions

The following definitions apply to OAR 331-800-0010 to 331-850-0010:

(1) "Active certificate" means a certificate issued when all requirements are met, fees paid and certificate is not expired, suspended or revoked.

(2) "Affidavit of licensure" means an original document verifying licensing history and status, issued by the licensing authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice.

(3) "Agency" means the Oregon Health Licensing Agency (OHLA). The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rule making, and record keeping.

(4) "Authorization" means the official document, the certificate, issued by the Oregon Health Licensing Agency.

(5) "Board" means pursuant to ORS 675.395, the entity that advises the agency in matters relating to the practice of sex offender treatment, including practice standards, education and training requirements, and advises the agency on all disciplinary issues in accordance with ORS 676.612. The Oregon Health Licensing Agency Director controls the regulatory operations and has decision-making authority on all substantive matters.

(6) "Certified clinical sex offender therapist" means a person who is certified by the agency to provide services for the treatment and rehabilitation of sex offenders and who may supervise certified associate sex offender therapist; also referred to as "clinical therapist".

(7) "Certified associate sex offender therapist" means a person who is certified by the agency to provide services for the treatment and rehabilitation of sex offenders while under the direct supervision of a certified clinical sex offender therapist; also referred to as "associate therapist".

(8) "Continuing education hours" means the actual academic classroom or course work time, including but not limited to workshops, symposiums, seminars, excluding personal travel time to and from the training site, registration or check-in periods breaks or lunch periods.

(9) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(10) "Direct supervision" means a minimum of two hours of supervision by a certified clinical sex offender therapist for each 45 hours of direct clinical contact with a sex offender as specified in ORS 675.365(4).

(11) "Direct treatment services" means face-to-face individual, group or family therapy, provided by a clinical or associate therapist, to a client.

(12) "Director" means, pursuant to ORS Chapter 676.610, the individual who has sole responsibility for the administrative, fiscal, human resource and regulatory functions of the agency.

(13) "Ethical" means conforming to professional standards, as adopted by the Association for the Treatment of Sexual Abusers' Practice Standards (ATSA) and Guidelines adopted in 2005, and Professional Code of Ethics adopted in 2001, regarding professional practices authorized under ORS 675.360 to 675.410 and rules adopted by the agency.

(14) "Evaluation" means a comprehensive psychosexual assessment or intake assessment conforming to professional standards as adopted by the Association for Treatment of Sexual Abusers' Practice Standards and Guidelines adopted in 2005, to determine a client's risk to re-offend, identify dynamic risk factors, and develop appropriate treatment and supervision plans. Evaluation includes a written report including, but not limited to the following:

(a) Useful guidance to others, such as the courts, in making decisions affecting a client's future and whether the client's risk can be managed in a community setting;

(b) Comprehensive description of the client's abusive and non-abusive sexual behavior;

(c) Amenability to treatment;

(d) Recommendations regarding the intensity and type of intervention that is required;

(e) Risk management strategies;

(f) Responsiveness to treatment, such as culture, ethnicity, age, IQ, learning style, neuropsychological disorders, personality style, mental and physical disabilities, medication, and motivation.

(15) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(16) "Informed consent" means consent obtained following a thorough and easily understood explanation to the client, or the client's guardian, of the proposed treatment plan, any available alternative procedures and any risks associated with the proposed plan. The therapist provides clients with information about the purpose, goals, techniques, procedures, limitations, and consequences of not consenting, the limits of

confidentiality, and alternatives to the services offered, potential risks and benefits of services to be performed. Supervisors ascertain the client's ability to understand and utilize the information.

(17) "Functionally disabled" means a severe and chronic disability that is attributable to a mental or physical impairment or a combination of physical and mental impairments which result in substantial functional limitations in three or more of the major life activities.

(18) "Mental health professional" means a person licensed to practice without supervision in the state of Oregon as a physician, psychiatrist, psychiatric nurse practitioner, psychologist, psychological associate, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist, who provides sex offender treatment of adults, juveniles or functionally disabled individuals.

(19) "Official transcript" means an original document certified by an accredited educational institution, delivered from the school to the agency by mail or courier, which includes:

(a) School name and location;

(b) Student's name, address and date of birth;

(c) Enrollment and termination dates;

(d) Hours and types of course work;

(e) Degree issued;

(f) School seal or stamp;

(g) Signature of authorized school representative or registrar.

(20) "Oregon Health Licensing Agency" (OHLA) means the agency assigned to carry out the administrative, programmatic and daily operations, and regulatory functions of ORS 676.606.

(21) "Professional mental health licensing or certification agency" means the entity charged with the administrative functions and responsibilities for protecting the public through the licensing and regulating of certain professions practiced in Oregon, or in a county, other state, country or territory. The entity has the responsibility for decisions on qualifications, standards of practice, licensing, discipline and other discretionary functions relating to professional activities in the professional licensing boards, councils, or programs; also known as regulatory authority.

(22) "Reciprocity" means, according to ORS 675.380, certification, registration or licensure in another state based on standards of training, education and experience that are similar to those required for certification in Oregon as a certified clinical sex offender therapist or a certified associate sex offender therapist as specified in ORS 675.375.

(23) "Sex offender specific treatment" means treatment modalities that are based on empirical research with regard to favorable treatment outcomes and are professionally accepted in the field of sex offender treatment of adults, juveniles, and functionally disabled individuals, with sexual behavior problems. Offense specific treatment is a comprehensive set of planned treatment experiences and interventions that modify sexually deviant thoughts, fantasies, and behaviors and that utilize specific strategies to promote change and to reduce the chance of re-offending.

(24) "Treatment plan" means an individualized written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

Stat. Auth.: ORS 675.410, 676.615
Stat. Implemented: ORS 675.360 through 675.410
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-800-0020
Fees

Fees established by the Oregon Health Licensing Agency are as follows:

(1) Application for certification:

(a) Clinical and associate therapist: $350.

(b) Grandfathering provision — time limited to March 14, 2009: $650.

(3) Original certificate — one year: $50.

(4) Application for renewal: $250.

(5) Renewal certificate — two year: $50.

(6) Replacement certificate, including name change: $25.

(7) Delinquency fee: $25 per month in expired status.

Stat. Auth.: ORS 675.405, 675.410, 676.625
Stat. Implemented: ORS 675.405
Hist: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-810-0020
Clinical Sex Offender Therapist Requirements

To qualify for certification as a clinical sex offender therapist, an applicant shall provide satisfactory evidence to the agency that requirements of ORS 675.375(3) have been met regarding education, training, and experience in the evaluation, treatment, and management of individuals who sexually offend, in addition to other requirements specified in this rule. Required documentation includes the following:

(1) Affidavit of licensure form prescribed by the agency, received from the appropriate Oregon professional mental health licensing or certifying agency, substantiating active status in good standing as a licensed mental health professional defined in OAR 331-800-0010;

(2) Record of at least 2,000 hours of professional clinical experience, of which 1,000 hours relates to providing direct treatment services as defined in OAR 331-800-0010, within a period of not less than three nor more than six years immediately preceding the date of application.

(3) Record of 500 hours of evaluations as defined in OAR 331-800-0010, that includes but is not limited to the following types of professional activities:

(a) Evaluation experience credit:

(A) Primary or secondary responsibility for interviewing the client;

(B) Preparation of the written evaluation report;

(C) All contact with clients; and

(D) Preparation of limited assessments for the purpose of:

(i) Institution classification;

(ii) Treatment monitoring; and

(iii) Reporting.

(b) Treatment experience credit:

(A) Face-to-face treatment hours performed by affiliates under the supervision of certified therapists;

(B) Time spent as a co-therapist. Both therapists shall have formal responsibility for the group session; and

(C) Time spent maintaining collateral contacts and written case/progress notes.

(4) Record of 500 hours of professionally related activities, associated with the following type of work:

(a) At least 340 hours of documented activities, including but not limited to:

(A) Client charting or case management;

(B) Research;

(C) Peer review, consultations, or meetings with attorneys, parole officers or other officials;

(D) Court time or testimony;

(E) Profession related committee work or attendance at sex offender treatment related meetings; and

(b) At least 160 hours of professional activities engaged in as a sex offender therapist, while under the direct supervision of a qualified mental health professional; refer to OAR 331-810-0050.

(5) Record of 60 hours of formal training directly related to the treatment and evaluation of sex offenders or victims of abuse that was completed within the last three years immediately preceding the date of application.

(a) Completion of formal training shall include documenting 45 hours of the total required hours, in the following essential subjects:

(A) Assessment and diagnosis;

(B) Cognitive therapy;

(C) Counseling and psychotherapy;

(D) Cultural/ethnic issues;

(E) Ethics applicable to working with a forensic population;

(F) Human development with special attention to sexual development and healthy sexuality;

(G) Interviewing skills;

(H) Knowledge of family dynamics as related to sex offending;

(I) Psychometric and psycho-physiological testing;

(J) Psychopathology;

(K) Relapse prevention;

(L) Relationship and social skills training;

(M) Risk assessment;

(N) Sexual arousal control;

(O) Social support networks;

(P) Victim awareness and empathy.

(b) Completion of formal training shall include documenting 15 hours of the total required hours, in the following areas of training and knowledge:

(A) Supervision;

(B) Assessment and treatment of mental illness including neuropsychological disorders;

(C) Couples and family therapy;

(D) Family reunification;

(E) Pharmacological therapy;

(F) Substance abuse treatment.

Stat. Auth.: ORS 675.375, 675.400, 676.615

Stat. Implemented: ORS 675.375, 675.400

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-810-0030

Associate Sex Offender Therapist Requirements

To qualify for certification as an associate sex offender therapist, an applicant shall provide satisfactory evidence to the agency that requirements of ORS 675.375(4) have been met regarding education, training and experience, in addition to other requirements listed in this rule. Required documentation includes the following:

(1) Official transcripts from college, university and post graduate records, showing attainment of at least a Bachelors of Science degree in the mental health field;

(2) Record of at least 1,000 hours of professional experience related to direct treatment services, as defined in OAR 331-800-0010, completed within three years preceding the date of application. Documentation shall include the number of hours involved in the following:

(a) Direct client contact;

(b) Review of treatment plans and provision of direct treatment services under supervision;

(c) Charting or case management;

(d) Research;

(e) Peer review, consultation, or meetings with attorneys, parole officers, or other officials;

(f) Court time or testimony;

(g) Profession related committee work or attendance at sex offender treatment related meetings; and

(3) Record of at least 30 hours of formal training directly related to the treatment and evaluation of sex offenders or victims of abuse that was completed within the last three years immediately preceding the date of application.

(a) Completion of formal training shall include documenting 75%, or 22.5 hours of the total required hours, in the following essential subjects:

(A) Assessment and diagnosis;

(B) Cognitive therapy;

(C) Counseling and psychotherapy;

(D) Cultural/ethnic issues;

(E) Ethics applicable to working with a forensic population;

(F) Human development with special attention to sexual development and healthy sexuality;

(G) Interviewing skills;

(H) Knowledge of family dynamics as related to sex offending;

(I) Psychometric and psycho-physiological testing;

(J) Psychopathology;

(K) Relapse prevention;

(L) Relationship and social skills training;

(M) Risk assessment;

(N) Sexual arousal control;

(O) Social support networks;

(P) Victim awareness and empathy.

(b) Completion of formal training shall include documenting 25%, or 7.5 hours of the total required hours, in the following areas of training and knowledge:

(A) Supervision;

(B) Assessment and treatment of mental illness including neuropsychological disorders;

(C) Couples and family therapy;

(D) Family reunification;

(E) Pharmacological therapy;

(F) Substance abuse treatment.

(4) Verification of and compliance with the requirements of direct supervision by a certified clinical sex offender therapist, according to OAR 331-810-0055.

Stat. Auth.: ORS 675.375, 675.400, 676.615

Stat. Implemented: ORS 675.375, 675.400

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-810-0035

Time Limited Grandfathering Provision

(1) Time Limitation. Pursuant to ORS 675.410(2)(b), an applicant who possesses all the qualifications for certification as a clinical sex offender therapist, but does not hold a certificate, license or registration as an Oregon mental health professional, required under ORS 675.375(3)(c) and defined in OAR 331-800-0010, may qualify for certification under a time limited grandfather provision within one year from the effective date of this rule.

(2) In the absence of an applicant holding an Oregon professional mental health certification, license, or registration, an applicant shall meet the training, education and experience qualification requirements and be otherwise eligible to apply for and attain such an authorization to practice.

(3) References. An applicant shall submit professional references from three individuals familiar with their work in sex offender treatment, such as personnel associated with Oregon State Department of Corrections, judicial system, direct supervisor, or a coworker.

(4) Transcripts. An applicant shall cause to be submitted to the agency official transcripts from a college, university and post graduate records, showing attainment of at least a masters or higher level degree in behavioral sciences.

(5) Qualification Pathways. An applicant for certification under the time limited grandfathering provision shall provide documentation verifying required clinical experience, evaluation and treatment experience, and formal training listed in subsections (6) through (9) of this rule under one of the following timelines:

(a) Pathway one: An applicant shall meet all qualification criteria within a period of six years immediately preceding the date of application; or

(b) Pathway two: An applicant shall meet qualification criteria within a period of ten years immediately preceding the date of application, with the 120 hours of required formal training completed at a minimum of 30 hours per year during the previous 4 years preceding the date of application.

(6) Professional Clinical Experience. An applicant must provide a record of at least 6,000 hours of professional clinical experience, of which 3,000 hours relates to providing direct treatment services as defined in OAR 331-800-0010.

(7) Professional Evaluation and Treatment Experience. An applicant must provide a record of 1,500 hours of evaluations, as defined in OAR 331-800-0010, which includes but is not limited to the following types of professional activities:

(a) Evaluation experience credit:

(A) Primary or secondary responsibility for interviewing the client;

(B) Preparation of the written evaluation report;

(C) All contact with clients; and

(D) Preparation of limited assessments for the purpose of:

(E) Institution classification;

(F) Treatment monitoring; and

(G) Reporting.

(b) Treatment experience credit:

(A) Face-to-face treatment hours performed by affiliates under the supervision of certified therapists;

(B) Time spent as a co-therapist. Both therapists shall have formal responsibility for the group session; and

(C) Time spent maintaining collateral contacts and written case/progress notes.

(8) Professional Activities. An applicant must provide a record of 1,500 hours of professionally related activities, associated with the following type of work:

(a) At least 1,200 hours of documented activities, including but not limited to:

(A) Client charting or case management;

(B) Research;

(C) Peer review, consultations, or meetings with attorneys, parole officers or other officials;

(D) Court time or testimony;

(E) Profession related committee work or attendance at sex offender treatment related meetings; and

(b) At least 300 hours of professional activities engaged in as a sex offender therapist, while under the direct supervision of a qualified mental health professional; refer to OAR 331-810-0055.

(9) Professional Formal Training. An applicant must provide a record of at least 120 hours of formal training directly related to the treatment and evaluation of sex offenders or victims of abuse:

(a) Completion of formal training shall include documenting 90 hours of the total required hours, in the following essential subjects:

(A) Assessment and diagnosis;

(B) Cognitive therapy;

(C) Counseling and psychotherapy;

(D) Cultural/ethnic issues;

(E) Ethics applicable to working with a forensic population;

(F) Human development with special attention to sexual development and healthy sexuality;

(G) Interviewing skills;

(H) Knowledge of family dynamics as related to sex offending;

(I) Psychometric and psycho-physiological testing;

(J) Psychopathology;

(K) Relapse prevention;

(L) Relationship and social skills training;

(M) Risk assessment;

(N) Sexual arousal control;

(O) Social support networks;

(P) Victim awareness and empathy.

(b) Completion of formal training shall include documenting 30 hours of the total required hours, in the following areas of training and knowledge:

(A) Supervision;

(B) Assessment and treatment of mental illness including neuropsychological disorders;

(C) Couples and family therapy;

(D) Family reunification;

(E) Pharmacological therapy;

(F) Substance abuse treatment.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615
Stat. Implemented: ORS 675.375, 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-810-0040
Reciprocity; Equivalencies

Pursuant to ORS 675.380, an applicant who is recognized as a clinical sex offender therapist or associate sex offender therapist in another state may be issued Oregon certification as a sex offender therapist if the applicant's education, experience and formal training meet similar requirements for Oregon certification under ORS 675.375 and OAR 331-810-0020.

(1) Educational equivalency includes completion of the following:

(a) A masters or doctoral degree in social work, psychology, counseling, or educational psychology from a regionally accredited institution of higher education; or

(b) A masters or doctoral degree in an equivalent field from a regionally accredited institution of higher education and documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content listed in subsection (2) of this section.

(2) Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in counseling, psychotherapy, and personality theory, and five graduate semester hours or seven graduate quarter hours in at least two of the following content areas:

(a) Counseling and psychotherapy;

(b) Personality theory;

(c) Behavioral science and research;

(d) Psychopathology/personality disorders;

(e) Assessment/tests and measurement;

(f) Group therapy/family therapy;

(g) Human growth and development/sexuality; and

(h) Corrections/criminal justice.

(3) Applicants must arrange for an affidavit of licensure form prescribed by the agency, to be received directly from the appropriate state agency, professional mental health licensing or certifying agency in the state where the applicant is currently licensed or certified, substantiating active status in good standing as a certified sex offender therapist defined in ORS 675.365.

(4) Applicants must document active practice as a certified sex offender therapist in another state during the previous two years immediately preceding application for Oregon certification.

(5) Applicants shall provide required documentation listed in OAR 331-030-0000, 331-820-0010 and other information as may be requested by the agency to determine equivalent education, experience and formal training for Oregon certification as a sex offender therapist.

Stat. Auth.: ORS 675.375, 675.380, 675.400, 676.615
Stat. Implemented: ORS 675.375, 675.380, 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-810-0050
Supervision Purpose Statement

(1) The importance of ongoing supervision is crucial to the development of an associate sex offender therapist. ORS 675.365(4) defines the "minimum" number of hours of direct supervision as being two hours of supervision by a certified clinical sex offender therapist for each 45 hours of direct clinical contact with a sex offender. The Board is charged with ensuring consumer protection, through setting appropriate practice standards and professional accountability for Oregon certification, and therefore recommends approved supervisors take a more prudent and professional position attuned to industry standards when establishing supervision agreements.

(2) Supervision is a professional relationship between a qualified clinical therapist acting as supervisor and an associate therapist. A clinical therapist, who is approved as a "supervisor", in contrast to the role of a consultant, carries the authority to direct caseload and treatment plans. Supervision, in contrast to treatment, will identify counter-transference issues and develop a plan for the associate therapist to work through those issues independently.

(3) Discussion between the supervisor and the associate therapist are based on case notes, charts, records, and available audio or visual tapes of clients. The certified associate sex offender therapist present assessments, diagnoses, and treatment plans of clients being seen. The focus is on the appropriateness of these treatment plans and the supervisee's therapeutic skill in promoting change in the client. The supervisor has the authority to decide the appropriateness of the associate therapist's client population against his or her level of expertise.

(4) Any variance from the requirements of OAR 331-810-0055 must be based on the individual circumstances and in the best interest of the associate and client, and in conformance with generally accepted standards of supervision and oversight. On such occasion, the therapist must document in writing the reasons for the variance in the contract or agreement. Failure to document the reasons for variance from stated requirements creates a presumption that the variance was not in the best interest of the supervisor, associate or client.

Stat. Auth.: ORS 675.375, 675,400, 675,410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-810-0055
Supervision Requirements

Supervision of a certified associate sex offender therapist is considerably different than consultation with other professionals. Consultation is solely advisory; consultants do not assume responsibility for those individuals with whom they consult. Supervision of associates requires that the supervisor take full ethical and legal responsibility for the quality of work of the associate therapist. A supervisor may not supervise more than two associate therapists at any time.

(1) An associate therapist shall establish and maintain a supervision contract with a clinical therapist which, at a minimum, meets the requirements of OAR 331-810-0050, in addition to the provisions of OAR 331-810-0040.

(2) A minimum of two hours supervision by a clinical therapist is required for each 45 hours of direct clinical contact an associate therapist has with a sex offender.

NOTE: The Board recommends one hour of supervision for each 10 hours of direct clinical contact with a sex offender.

(3) Documentation of the dates and content of supervision meetings shall be submitted to the agency to verify appropriate supervision requirements have been met.

(4) All supervision shall take place concurrently with practice hours.

(5) Supervision includes, but is not limited to:

(a) Discussion of services provided by the associate therapist;

(b) Case selection, diagnosis, treatment plan, and review of each case or work unit of the associate therapist;

(c) Discussions regarding theory and practice of the work being conducted;

(d) Review of Oregon's laws, rules, and criminal justice procedures relevant to the work being conducted;

(e) Discussion of the standards of practice for supervisors and associates as adopted by the agency and the ethical issues involved in providing professional services for sex offenders;

(f) Discussion regarding coordination of work with other professionals and parties;

(g) Discussion of relevant professional literature and research; and

(h) Periodic review of the contract.

(6) The supervisor shall:

(a) Avoid presenting to the associate therapist as having qualifications in areas that they do not have;

(b) Provide sufficient training and supervision to the associate therapist to assure the health and safety of the client and community;

(c) Have expertise and knowledge to directly supervise the associate therapist's work; and

(d) Assure that the associate therapist being supervised has sufficient and appropriate education, background, and preparation for the work he or she will be doing.

(7) The supervisor and associate therapist shall enter into a formal written contract that defines the parameters of the professional relationship. The contract shall be submitted to the agency for approval and shall include:

(a) Supervised areas of professional activity;

(b) Amount of supervision time and the frequency of supervisory meetings. This information may be presented as a ratio of supervisory time to clinical work conducted by the associate therapist;

(c) Supervisory fees and business arrangements, when applicable;

(d) Nature of the supervisory relationship and the anticipated process of supervision;

(e) Selection and review of clinical cases;

(f) Methodology for recordkeeping, evaluation of the associate, and feedback; and

(g) How the associate therapist will be represented to the public and the parties.

(8) Supervision of associate therapists shall involve regular, direct, face-to-face supervision. Depending on the associate therapist's skill and experience levels, the clinical therapist's supervision shall include direct observation of the associate therapist by sitting in session, audio tape recording, videotaping, or other means of observation.

(9) In some cases, such as geographic location or disability, more flexible supervision arrangements may be allowed. The supervisor shall submit requests for more flexible supervision arrangements to the agency for approval.

(10) The supervisor shall assure that the associate therapist is prepared to conduct professional work, and shall assure adequate supervision of the associate therapist. The supervisor should meet face-to-face with the associate therapist one hour for every ten hours of supervised professional work; but shall meet minimally 2 hours for every 45 hours of direct contact with sex offenders. Supervision meetings shall regularly occur at least every other week.

(11) A supervisor may not undertake a contract that exceeds the supervisor's ability to comply with supervision standards.

(12) The agency recognizes the needs of certain locales, particularly rural areas, and may allow a variance from the standards of this rule. Any variance request shall be submitted to the agency for approval with the supervision contract. Variances will be granted or denied in writing within thirty days.

(13) The nature of the associate therapist and clinical therapist supervisory relationship shall be communicated to the public, other professionals, and all clients served.

(14) An associate therapist shall represent himself or herself as an associate when performing clinical work and shall provide the name of the contracted supervisor.

(15) The supervisor shall cosign all written reports and correspondence prepared by the associate therapist. The written reports and correspondence shall include a statement that indicates the work has been conducted by the associate therapist acting under the clinical therapist's supervision.

(16) Both the supervisor and associate therapist shall maintain full documentation of the work done and supervision provided. The agency may audit the supervisor and associate therapist's records to assure compliance with laws and rules.

(17) All work conducted by the associate therapist is the responsibility of the supervisor. The supervisor shall have authority to direct the practice of the associate therapist.

(18) It is the supervisor's responsibility to correct problems or end the supervision contract if the associate therapist's work does not protect the interests of the clients and community. If the supervisor ends the contract, he or she shall notify the agency in writing within thirty days of ending the contract. A new contract must be filed with the agency.

(19) Supervision is a power relationship. The supervisor shall not use his or her position to take advantage of the associate therapist. This subsection is not intended to prevent a supervisor from seeking reasonable compensation for supervisory services.

(20) A supervisor shall only delegate responsibilities to an associate therapist, who has been assessed to have the competency to perform the delegated professional tasks.

(a) Supervision arrangements for associate therapists shall be agreed upon in writing and shall specify:

(b) Expected associate therapist duties;

(c) The scope and focus of the supervision; and

(d) The frequency and durations of meetings between the supervisor and the associate therapist to review the associate therapist's professional performance.

(e) The supervision of the associate therapist shall provide proper training to persons who delegate professional tasks and take reasonable steps to see that such persons perform services responsibly, completely, and ethically.

(f) The supervisor shall not engage in sexual relationships with an associate therapist over whom the supervisor has evaluative or direct authority, as such relationships are likely to impair judgment or be exploitative.

Stat. Auth.: ORS 675.375, 675,400, 675,410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-820-0010
Application Requirements

(1) An individual applying for certification as a sex offender therapist under ORS 675.370 shall submit an application form prescribed by the agency, which contains information listed in OAR 331-030-0000, payment of required application and certification fees, and satisfactory evidence of meeting qualification criteria according to one of the following certification pathways:

(a) Clinical sex offender therapist: required documentation pertaining to education, training and experience listed in OAR 331-810-0020;

(b) Associate sex offender therapist: required documentation pertaining to education, training, experience and supervision listed in OAR 331-810-0030;

(c) Individuals applying under a time limited grandfather provision: required documentation pertaining to education, training and experience listed in OAR 331-810-0035; or

(d) Individuals applying under ORS 675.380 reciprocal or equivalent credentials: required documentation pertaining to education, training and experience listed in OAR 331-810-0040.

(2) An application for certification shall be accompanied by a proposed professional disclosure statement, required under ORS 675.375(1), and the applicant's fingerprint and criminal background check forms prescribed by the agency.

Stat. Auth.: ORS 675.375, 675.400, 676.607, 676.615,
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-820-0020
License Issuance and Renewal

(1) Certified clinical sex offender therapists and certified associate sex offender therapists are subject to the provisions of OAR 331-030-0010 regarding the issuance and renewal of a certificate, and to the provisions of OAR 331-030-0020 regarding the authorization to practice, identification and the requirements for issuance of a duplicate authorization.

(2) Notwithstanding ORS 675.375(5) and 331-030-0010(1), the certificate will be issued for a two-year period from the date all qualifications have been met.

(3) Renewal of a certificate shall be made in advance of the certification expiration date by submitting the following to the agency:

(a) Renewal application form;

(b) Renewal fees;

(c) Signed attestation of completion of required continuing education according to OAR 331-830-0010; and

(d) Satisfactory documentation recording at least 100 hours of clinical experience per year preceding renewal, of which 50 hours is related to direct clinical contact with sex offenders. Refer to OAR 331-830-0010.

(4) A completed certificate renewal application received by the agency or postmarked after a certificate has expired, but within three years from the expiration date, may be approved upon payment of the application for renewal and delinquency fees for each year in expired status, signed

attestation of having obtained required continuing education pursuant to the provisions of ORS 675.375(5)(c) and OAR 331-810-0020 or 331-810-0030, and completion of the prescribed number of hours of clinical experience required in ORS 675.375(5)(b) for each year in expired status.

(5) A certificate that has been expired for more than three years shall be deemed invalid and may be reactivated by submitting to the agency the following requirements:

(a) Application form and information required according to OAR 331-030-0000 and 331-820-0010;

(b) Payment of application, reactivation and certificate fees;

(c) Completion of prescribed continuing education during period of inactive certification.

(6) Evidence of required continuing education shall be provided at the time of renewal by means of a prescribed self-attestation form certifying participation in approved continuing education.

(7) Continuing education documentation shall be accumulated and held by the certificate holder for a period of 3 years following renewal, or until submitted to the agency at the time of audit within the three year period.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615
Stats. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-830-0005
Continuing Education Purpose Statement

The aim of continuing education for sex offender treatment therapists is to ensure that professionals practicing in this specialty field are knowledgeable of current scientific and practice principles that affect the supervision and treatment of sex offenders in community-based treatment. Since the treatment of sex offenders in communities raises significant public safety concerns, continuing education is required to help sex offender treatment therapists deliver the highest quality of professional service by being familiar with current developments in a rapidly changing profession.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-830-0010
Continuing Education Requirements

(1) To ensure continuing efforts on the part of Oregon certified clinical sex offender therapists and certified associate sex offender therapists to remain current with new developments in the treatment of sexual abusers and the mental health profession, and to encourage diversified training and qualifications in the profession, continuing education is required as a condition of certification.

(2) Continuing education experiences are programs beyond the basic education required to obtain certification which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of the practices of sex offender therapists, thus improving sex offender therapies provided to the public.

(3) To be in compliance with the provisions of ORS 675.360 to 675.410 and the rules adopted by the agency, clinical therapists and associate therapists shall complete a minimum of 15 hours continuing education in the field of sex offender treatment during each year within a renewal cycle.

(4) Continuing education includes training related to sex offender treatment consisting of the following subject matter:

(a) Assessment and diagnosis;

(b) Cognitive therapy;

(c) Counseling and psychotherapy;

(d) Cultural/ethnic issues;

(e) Ethics applicable to working with a forensic population;

(f) Human development with special attention to sexual development and healthy sexuality;

(g) Interviewing skills;

(h) Knowledge of family dynamics as related to sex offending;

(i) Psychometric and psycho-physiological testing;

(j) Psychopathology;

(k) Relapse prevention;

(l) Relationship and social skills training;

(m) Risk assessment;

(n) Sexual arousal control;

(o) Social support networks;

(p) Victim awareness and empathy.

(q) Supervision;

(r) Assessment and treatment of mental illness including neuropsychological disorders;

(s) Couples and family therapy;

(t) Family reunification;

(u) Pharmacological therapy;

(v) Substance abuse treatment.

(5) An instructor, discussion leader, or speaker shall be given two hours of credit for subject preparation for each hour of presentation time, plus one additional hour of credit for each hour of actual presentation time. For example, a qualified instructor who conducts a one hour qualified program shall be given credit of three hours; a qualified instructor who conducts a one and one-half hour qualified program shall be given credit of four and one-half hours.

(6) Credit shall not be given for more than 5 hours of continuing education credit in a reporting period for lectures (preparation and teaching) and published material combined.

(6) The agency shall accept any continuing education that reasonably falls within the categories listed in subsection (4) of this rule. The agency relies upon each individual therapist's integrity with meeting the intent of continuing education requirements.

(7) Continuing education requirements apply whether the applicant renewing a certificate is living or working within Oregon or outside of the state while Oregon certification is maintained.

(8) The agency may grant exemptions in whole or part from continuing education requirements, including extension of deadlines, in documented hardship cases.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-830-0020
Continuing Education: Audits, Required Documentation & Sanctions

(1) The Oregon Health Licensing Agency will select a prescribed percentage of certification records for audit to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation shall submit to the agency, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education.

(3) Documentation of a certificate of completion of attendance at a program or course provided by the sponsor shall include:

(a) Name of sponsoring institution/association or organization;

(b) Title of presentation and description of content;

(c) Name of instructor or presenter;

(d) Date of attendance and duration in hours;

(e) Course agenda;

(f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) If documentation of continuing education is invalid or incomplete, the certificate holder shall correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(5) Misrepresentation of continuing education or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the certification.

Stat. Auth.: ORS 675.375, 675.385, 675.400, 675.410, 676.615, 676.992
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-840-0010
Standards of Practice

Sex offender therapists are also credentialed health professionals, and are subject to the standards of practice of their primary field of practice. However, standards of practice vary from profession to profession, and sex offender evaluation and treatment represents significant differences in practice from general mental health interventions.

(1) The standards set forth in OAR chapter 331, division 840 apply to all certified clinical sex offender therapists and certified associate sex offender therapists, hereafter referred to as certified sex offender therapist as specified in ORS 675.365(3).

(2) Standards of practice are necessary due to the unique characteristics of this area of specialized practice, the degree of control that a certified sex offender therapist exercises over the lives of clients, and the community protection issues inherent in this work.

(3) Failure to comply with these standards may constitute unprofessional conduct, which is subject to discipline under ORS 676.612.

(4) Any deviation from the standards of OAR 331-840-0020 must be based on the individual circumstances and in the best interest of the client, and in conformance with generally accepted standards of sex offender treatment and client care. On such occasion, the therapist must document in writing the reasons for the deviation in the client's records. Failure to document the reasons for the deviation from stated standards creates a presumption that the deviation was not in the best interest of the client.

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615
Stats. Implemented: ORS 675.390, 675.400
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-840-0020
Professional Conduct and Client Relationships

(1) The Sex Offender Treatment Board adopts the 2001 Association for the Treatment of Sexual Abusers (ATSA) Professional Code of Ethics, Ethical Principles, to the extent it does not conflict with ORS 675.360 through 675.410, 676.605 through 676.625, and any rules adopted by the agency.

(2) A copy of the Professional Code of Ethics may be accessed at the web site: http://www.atsa.com/pdfs/COE.pdf. The information may also be available by contacting ATSA at the following address: 4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon U.S.A. 97005, Phone: (503) 643-1023, Fax: (503) 643-5084, E-mail: atsa@atsa.com.

(3) Therapists shall adhere to ATSA ethical principles relating to professional conduct, payment of services, training and expertise, personal problems and conflicts, supervisory relationships, client relationships, multiple relationships, confidentiality, professional relationships, research and publications, and public information and advertising.

(4) Therapists shall not engage in sexual contact or sexual activity with their clients, former clients, or any person participating in the treatment process of a client while therapy is ongoing.

(5) Sexual misconduct includes but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient, client or key party;

(j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the health care therapist;

(l) Masturbation or other sex act by the health care therapist in the presence of the patient, client or key party;

(m) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(o) Soliciting a date with a patient, client or key party;

(p) Discussing the sexual history, preferences or fantasies of the health care therapist;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615 Stats. Implemented: ORS 675.390, 675.400
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-840-0030
Communications with other Professionals

Certified sex offender therapists may establish professional relationships with corrections or probation officers and other mental health professionals for the purpose of effective supervision and monitoring of an offender's behavior in the community. When appropriate, the therapist shall seek an authorization for release of information from the client to communicate with such agencies for treatment or monitoring purposes.

(1) Any violation of the treatment plan or contract, including court orders or parole agreements, or conditions of supervision shall be reported to the parole officer or other supervising officer.

(2) Therapists shall make periodic progress reports to the supervising officer as mutually agreed upon. Additional information regarding treatment progress shall be provided in a timely manner when requested by the court or other supervising officer.

(3) Prior to implementation, plans for contact with the victim, potential victims and plans for family reunification or return (where appropriate) should be reviewed with the supervising officer.

(4) Where appropriate and consistent with the adult offender's informed consent, certified sex offender therapists shall communicate with the victim's therapist, guardian ad litem, custodial parent, guardian, caseworker, other family members, or other involved professional in making decisions regarding family reunification or return, or victim contact with the offender.

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615 Stats. Implemented: ORS 675.390, 675.400
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-840-0040
Mandatory Reporting

(1) Pursuant to ORS 675.390, the Sex Offender Treatment Board is required to report to the Oregon Health Licensing Agency any conviction, determination, or finding of which they have personal knowledge that any person certified as a clinical sex offender therapist or associate sex offender therapist has committed an act which constitutes unprofessional conduct under ORS 676.612 and the provisions of OAR 331-840-0010.

(2) The following persons are required to report the information identified in subsection (1) of this section:

(a) Persons certified as a clinical sex offender therapist or certified as an associate sex offender therapist;

(b) The president, chief executive officer, or designated official of any professional association or society whose members are a certified sex offender therapist;

(c) Prosecuting attorneys and deputy prosecuting attorneys;

(d) Community corrections officers employed by the Oregon Department of Corrections;

(e) Juvenile probation or parole counselors who provide counseling or supervision to juveniles;

(f) The president, chief executive officer, or designated official of any public or private agency which employs a certified sex offender therapist;

(g) The president, chief executive officer, or designated official of any credentialing agency for health professionals.

(3) Reports under this section shall be made in writing, and shall include the name, address, and telephone number of the person making the report, the name and address of the person about whom the report is made, and complete information about the circumstances giving rise to the report.

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615 Stats. Implemented:ORS 163, 419B, 675.390, 675.400
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-840-0050
Client Confidentiality; Disclosure and Informed Consent

For the purpose of clarifying requirements, the term "client" as used in this rule, means the sex offender which is receiving the treatment from the certified clinical sex offender therapist or certified associate sex offender therapist, referred to as "therapist" in this rule unless otherwise specifically noted.

(1) The certified sex offender therapist is responsible for insuring that clients, consultation parties, family members, research participants, organizations or agencies, and all other professional and work related contacts fully understand issues related to confidentiality. This includes, but it not limited to:

(a) Informing clients of the limits of confidentiality;

(b) Informing clients of any circumstances that may cause an exception to the agreed-upon confidentiality;

(c) Specifically informing clients about mandatory reporting requirements; and

(d) Clarifying issues of confidentiality where multiple parties are involved.

(2) Therapists shall comply with the provisions of ORS 675.390, and shall notify clients of the limits of confidentiality imposed on therapists by the provisions of ORS 675.390 and rules adopted by the agency.

(3) Therapists shall comply with mandated reporting laws and statutes. No part of this rule shall be construed as releasing therapists from such obligations. If the circumstances allow, therapists shall inform clients that they will comply with the mandated reporting requirements.

(4) Unless reporting is mandated, written permission is required before any data maybe disclosed to persons beyond a therapist's staff. Clients shall be informed of the reason for the release of information.

(5) Therapists providing services within the criminal justice setting shall inform all parties involved of the level of confidentiality that applies.

(6) Therapist information shall not communicate to others without the written and informed consent of the client, unless the following circumstances apply:

(a) The client presents a clear and immediate danger to another individual or individuals.

(b) The client presents a clear and immediate danger to him/herself.

(c) There is an obligation to comply with the specific governmental statutes or regulations requiring reporting to authorities.

(7) Therapists shall ensure that a client is provided informed consent when an individual under the therapist's supervision is providing services to the client. The client must be informed of the name of the therapist who is supervising the associate therapist and any affect on confidentiality.

(8) Therapists shall clarify, in a manner that the client is capable of understanding, issues of confidentiality in cases involving functionally disabled individuals or minors, when sharing information with parents, guardians, or agencies that may have custody of the functionally disabled individual or minor.

(9) When working with clients incapable of giving informed consent, including functionally disabled individuals or minors, the therapist is still responsible to:

(a) Inform the client about any proposed assessments or interventions in a manner commensurate with the person's psychological, functional, or developmental capabilities;

(b) Seek their help and participation in such interventions; and

(c) Consider such persons' preferences and best interest.

(10) Therapists who provide service to several persons who have a relationship (such as husband and wife or family members), shall clarify at the outset how confidentiality will apply among participants and to any external individual or entity (e.g., criminal justice).

(11) Therapists shall obtain written informed consent from a legally authorized person or agency for providing services, for participation in research, and in video taping for educational purposes, in instances where persons are legally capable of giving informed consent.

(12) Therapists shall not share confidential information with colleagues that might reasonably lead to the identification of a sex offender, research participant, organization or other person with whom the therapist has a confidential relationship.

(13) Therapists shall protect the confidentiality of participants when utilizing audio tape or video tape information in the context of training, workshops or research studies. Such tapes will be used only with the written and informed consent of all individuals portrayed on the tapes for that particular use (i.e., training, workshops, and research studies).

(14) Live demonstrations of treatment techniques with current or former clients or their families is considered exploitative and compromises confidentiality beyond what can be justified relative to education benefits.

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615 Stats. Implemented: ORS 163, 419B, 675.390, 675.400

Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-840-0060

Client Records

For the purpose of clarifying record keeping requirements, the term "client" as used in this rule, means the sex offender which is receiving the treatment from the certified sex offender therapist who will be providing treatment.

(1) Required Records. Therapists shall record, update and maintain documentation for each client relevant to health history, clinical examinations and treatment, and financial data. Documentation shall be written or electronic. Records shall include the following information:

(a) Basic client information, including name, address, telephone number and dates of service;

(b) Health history relevant to sex offender evaluation or treatment plan(s), including referral to other mental health care provider or physician.

(c) Date and description of services rendered in the form of "chart notes", including any complications. Chart notes shall include the recorder's initials, certification number and professional title if multiple practitioners provide service to the client.

(2) Record Format. Records and documentation shall be accurate, complete, and legible, typed or recorded using ink. Legible hand-written or electronic records are acceptable.

(3) Record Identifiers. Client records listed in subsection (1) of the rule shall include the therapist's name, license number, professional title or abbreviation, and signature or initials somewhere on the documentation as a means of identifying the person who is providing service to the client. This information may be affixed to the record(s) in the form of a professional stamp or handwritten entry.

(4) Record Retention. All client records and documentation, written or archived electronically by computer, shall be stored and maintained for a minimum of seven years after the therapist has last seen the client or past the age of minority, so that the records are safeguarded, readily retrievable, and available for inspection by the Oregon Health Licensing Agency's representative.

Stat. Auth.: ORS 675.390, 675.4100, 675.410, 676.615

Stats. Implemented: ORS 675.390, 675.400, 675.410

Hist: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

331-850-0010

Investigative Authority

The Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of Sex Offender Treatment, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 675.385.

Stat. Auth.: ORS 675.385, 676.608, 676.612

Stats Implemented: ORS 675.385, 676.608, 676.612

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08

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Oregon Health Licensing Agency, Board of Cosmetology
Chapter 817

Rule Caption: Clarifying practice standards and client records relating to skin care services and laser hair removal treatments.
Adm. Order No.: BOC 1-2008
Filed with Sec. of State: 5-27-2008
Certified to be Effective: 6-1-08
Notice Publication Date: 5-1-2008
Rules Adopted: 817-015-0070
Rules Amended: 817-010-0065, 817-015-0050, 817-015-0065
Subject: Rules streamline and clarify requirements and standards for use of manual or mechanical devices and equipment in the performance of services, specify documentation requirements, including new client records related to laser treatments, and adhere to the American National Standards for Safe Use of Lasers (ANSI) in performing laser skin care services. Rule amendments to clarify ambiguity and resolve practice conflicts stemming from the March 2006 rule filing.
Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

817-010-0065

Requirements and Standards

(1) All tools and implements that come in direct contact with a client, shall be disinfected or disposed of after use.

(2) Only disinfecting agents that meet the criteria set forth in OAR 817-010-0005(34) and (39) are approved for use.

(3) Holders of a facility license, independent contractor registration, or certificate of identification shall provide and maintain adequate disinfecting or sterilizing equipment for the number of practitioners, usage requirements, and volume of business.

(4) Optional sterilization equipment used in lieu of disinfectants shall be checked annually to ensure it is reaching the temperature and/or pressure required by manufacturer's instructions.

(5) When used according to the manufacturer's instructions, each of the following is an approved method of disinfecting tools and implements:

(a) Complete immersion in the disinfecting solution of the object(s) or portion(s) thereof to be disinfected;

(b) Steam sterilizer, registered and listed with the U.S. Food and Drug Administration; or

(c) Dry heat sterilizer or autoclave, registered and listed with the U.S. Food and Drug Administration.

(6) All disinfecting agents shall be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

(7) Nail files, cosmetic sponges, buffer blocks, sanding bands or sleeves, orangewood sticks, and disposable nail bits that have not been approved by the agency for disinfection and reuse, shall be given to the client or discarded after use on each client. Presence of these articles in the work area (facility) shall be prima facie evidence of use.

(8) Protective gloves that are not cleaned with soap and water and disinfected shall be disposed of after use on a client (refer to provisions of OAR 817-015-0030(3) and (5).

(9) All manual or mechanical devices and equipment used in the practice of barbering, esthetics, hair design or nail technology must meet all "*product registration requirements*" imposed by any federal, state, county, or local authority.

(10) All manual or mechanical devices or equipment used in the practice of barbering, esthetics, hair design or nail technology must be used in accordance with the "*product safety requirements*" imposed by any federal, state, county, or local authority.

(11) Each practitioner, facility owner or independent contractor must verify, maintain, or be able to access documentation related to any device classified by the U.S. Food and Drug Administration (FDA) that is used in the practice of barbering, esthetics, hair design, and nail technology, as defined in ORS 690.005.

(12) Practitioners may not use any manual or mechanical device or equipment unless the use is part of the delivery of services within the practitioner's scope of practice under ORS 690, and is consistent with the manufacturer's intended use of the device and with client health and safety. In determining whether the use of any manual or mechanical device or equipment is consistent with client health and safety, the agency will consider the information provided in the documentation required by section (11) of this rule.

(13) The documentation requirements described in section (11) of this rule apply to specialized items used in the practice of barbering, esthetics, hair design or nail technology and may not apply to those items used in the delivery of basic services, which have been defined as an "article", equipment", or "materials and supplies" in OAR chapter 817, division 005, such as scissors, combs, orangewood sticks, shampoo bowls, styling chairs or nail files.

(14) Practitioners must permit any representative of the agency to inspect any manual or mechanical device or equipment used in the practice of barbering, esthetics, hair design or nail technology or the documentation required by section (11) of this rule, upon demand.

(15) Practitioners, facility owners and independent contractors providing laser hair reduction skin care services, shall comply with requirements of the March 16, 2007 edition of the American National Standards for Safe Use of Lasers (ANSI) Z136.1-2007. ANSI publications may be obtained form Laser Institute of America, 13501 Ingenuity Drive, Suite 128, Orlando, Florida 32826 — ISBS-13: 9877-0-912035-65-9 & ISBN-10:0-912035-65-X.

Stat. Auth.: ORS 690.205
Stats. Implemented: ORS 690.205
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 2-1980, f. & ef. 5-29-80; BH 2-1982, f. & ef. 3-31-82; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 78-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2008, f. 5-27-08, cert. ef. 6-1-08

817-015-0050
Skin Care Services

(1) Estheticians may use only those chemicals or products, natural or synthetic, and manual mechanical devices designed for skin care services.

(2) Estheticians shall not use chemicals or products, natural or synthetic, manual and mechanical devices, which may damage skin.

(3) Chemicals prohibited for use shall include, but not be limited to, the following:

(a) Unbuffered alpha-hydroxy acids at concentrations greater than 15 percent;

(b) Buffered concentrations of alpha-hydroxy acids of 10 to 30 percent where pH is less than 3;

(c) Any concentration or formulation of alpha-hydroxy acids greater than 30 percent;

(d) Any concentration or formulation of trichloracetic acid (TCA) formulation containing phenol or resorcinol, or salicylic acid which acts on living tissue.

(4) An esthetician must obtain training in the safe and effective use of each chemical, product or device that the esthetician uses to provide services in the practice of esthetics, and must provide documentation of that training in response to a request from the agency. Refer to OAR 817-010-0065.

(5) All exfoliant products or formulations, and manual or mechanical devices shall be used in accordance with manufacturer's recommendations.

Stat. Auth.: ORS 676.605 & 690.165
Stats. Implemented: ORS 676.605 & 690.165
Hist.: BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2008, f. 5-27-08, cert. ef. 6-1-08

817-015-0065
Client Records

(1) Facility owners and independent contractors providing esthetic or nail technology services must maintain client records to ensure basic client information is available to safeguard the health and well being of both the client and practitioner.

(2) Legible hand-written or electronic records are acceptable. Basic client information includes the client's name, address, telephone number, type of service and date of service.

(3) The record must include the name and registration number of the practitioner providing service, and special instructions or notations that the practitioner believes to be pertinent to providing esthetic or nail technology services to the client, such as bleeding disorders, allergies or sensitivities to chemicals or products or complications during service(s).

(4) A practitioner may obtain medical advice if necessary to safeguard the client or the practitioner.

(5) Client records must be kept at the facility premises for a minimum of two years and must be made available immediately upon request from an enforcement officer of the Oregon Health Licensing Agency.

(6) A practitioner may not provide services to a client who refuses to provide the personal information required by (2) of this rule unless the client signs a waiver form documenting the client's refusal to provide the required information. The signed waiver form must be retained on file in the manner required in subsection (5) of this rule for client records.

(7) Practitioners providing laser hair reduction services must comply with client intake assessment and record keeping requirements of OAR 817-015-0070.

Stat. Auth.: ORS 676.605 & 690.165
Stats. Implemented: ORS 676.605 & 690.165
Hist.: BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2008, f. 5-27-08, cert. ef. 6-1-08

817-015-0070
Laser Hair Reduction Client Assessment and Records

Practitioners providing laser hair reduction services must adhere to the following practice standards in rendering acceptable client skin care:

(1) Maintain an accurate client record, which includes complete past and current health history obtained from each client before service. The assessment shall be updated and evaluated on a current basis, and must include the following:

(a) Name, address, telephone number, and date of birth.

(b) Client medical history information relevant to providing services.

(c) Prior methods of controlling or removing hair.

(d) Condition of skin tissue before initial service and any subsequent change.

(e) Pattern and structure of hair growth initially presented and any changes.

(f) Client consultation, evidence of informed consent (may be in the form of an acronym such as "PARQ" to denote procedures, alternatives, risks and questions).

(g) Date and duration of each service.

(h) Area of hair reduction service, and use of energy fluence, pulse duration and spot size.

(i) Observation of skin reaction(s) to service(s).

(j) Any other information deem appropriate to client service.

(2) Documentation must be legibly written or computerized. Client documentation, written or archived electronically by computer, must be retained for a minimum of two years and available upon request by the agency.

(3) Provide each client with a clear and concise explanation of the process and likely outcome of laser hair reduction services before providing the service:

(a) Laser hair reduction procedures.

(b) Modality to be used.

(c) Hair growth / regrowth cycles.

(d) Recommended schedule for service.

(e) Possible adverse reactions after service.

(f) Post-service care.

Stat. Auth.: ORS 690.165 & 690.205

Stats. Implemented: ORS 690.165

Hist.: BOC 1-2008, f. 5-27-08, cert. ef. 6-1-08

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Oregon Liquor Control Commission
Chapter 845

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

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: 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

845-005-0416
Definitions

As used in OAR 845-005-0416 through 845-005-0426:

(1) The term "ship" means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term "deliver" has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.

(2) "Same-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine or cider on the same day the person receives the order from the customer.

(3) "Next-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine or cider after the day the person receives the order from the customer.

(4) "For-hire carrier" means any person or company who holds itself out to the public as willing to transport property in return for compensation. The term "for-hire carrier" can include a common carrier.

(5) "Month" means a calendar month.

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

Stats. Implemented: ORS 471.282

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-005-0417
Qualifications for Direct Shipment of Wine or Cider to a Resident of Oregon

ORS 471.282 allows a person with a Direct Shipper Permit to sell and ship wine or cider directly to a resident of Oregon who is at least 21 years of age. 471.186 allows an off-premises sales licensee to deliver wine and cider to a resident of Oregon who is at least 21 years of age. This rule sets the qualifications to obtain a Direct Shipper Permit and for an off-premises sales licensee to obtain approval from the Commission to make same-day delivery of wine and cider.

(1) Only the following persons may qualify for a Direct Shipper Permit:

(a) A person holding a winery license issued under ORS 471.223 or a grower sales privilege license issued under 471.227.

(b) A person holding a temporary sales license issued under ORS 471.190 that is also a nonprofit trade association and that has a membership primarily composed of persons holding winery licenses issued under ORS 471.223 and grower sales privilege licenses issued under 471.227.

(c) A person holding a license issued by another state within the United States that authorizes the manufacture of wine or cider.

(d) A person holding a license issued by another state within the United States that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the licensee.

(e) A person holding a license issued by another state within the United States that authorizes the sale of wine or cider at retail for consumption off the licensed premises.

(2) Application for a Direct Shipper Permit. A person, other than an off-premises sales licensee, must make application to the Commission upon forms to be furnished by the Commission and receive a Direct Shipper Permit from the Commission before shipping any wine or cider directly to a resident of Oregon. The application shall include:

(a) If the application is by a person described under subsection (1)(a) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392.

(b) If the application is by a person described under subsection (1)(b) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392; a bond or other security described in ORS 471.155 in the minimum amount of $1,000; and a $50 fee.

(c) If the application is by a person described under subsection (1)(c), (1)(d), or (1)(e) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392; a true copy of their license; a bond or other security described in ORS 471.155 in the minimum amount of $1,000; and a $50 fee.

(3) The Commission may revoke or refuse to issue or renew a Direct Shipper Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

(4) A Direct Shipper Permit must be renewed annually.

(a) If the person holds the permit based on a license issued by another state, the permit may be renewed by paying a $50 renewal fee, providing the Commission with a true copy of a current license issued to the person by the other state, and providing proof of a bond or other security described in ORS 471.155 in the minimum amount of $1,000.

(b) If the person holds the permit based on an annual license issued by this state, the permit may be renewed at the same time that the license is renewed.

(5) Application for Same-Day Delivery. A person who holds, or is applying for, a Direct Shipper Permit or an off-premises sales license issued by the Commission who intends to provide the service of same-day delivery of wine or cider to a resident of Oregon must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission prior to beginning the same-day delivery service. The application for same-day delivery approval shall include a statement that the person understands and will follow the same-day delivery requirements listed in OAR 845-006-0392.

(6) The Commission may refuse to process any application required under this rule if the application is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.186 & 471.730(1) & (5)

Stats. Implemented: ORS 471.155, 471.186 & ORS 471.282

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-005-0420

Qualifications for Same-Day and Next-Day Retail Delivery of Malt Beverages to Residents of Oregon

ORS 471.305 allows certain licensees of the Commission to deliver malt beverages to customers. This rule describes the qualifications to make same-day and next-day delivery of malt beverages to a resident of Oregon.

(1) Only a holder of one of the following licenses may qualify to deliver malt beverages to a resident of Oregon:

(a) An off-premises sales license issued under ORS 471.186.

(b) A brewery-public house license issued under ORS 471.200.

(2) Notice of Next-Day Delivery. A licensee that intends to provide the service of next-day delivery of malt beverages to a resident of Oregon must notify the Commission in writing prior to beginning the next-day delivery service that it intends to provide this service. All deliveries must meet the requirements set forth in OAR 845-006-0396 for next-day delivery.

(3)(a) Application for Same-Day Delivery. A licensee that intends to provide the service of same-day delivery of malt beverages to a resident of Oregon must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission prior to beginning the same-day delivery service. The application shall include:

(b) A statement that the person understands and will follow the requirements for same-day delivery listed in OAR 845-006-0396.

(4) The Commission may refuse to process any application not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-005-0424

Guidelines for Approval of a For-Hire Carrier's Plan for Delivery of Malt Beverages, Wine or Cider

The Commission will evaluate and may approve a for-hire carrier's plan to deliver malt beverages, wine and cider to a resident of Oregon and licensees of the Commission.

(1) Delivery to a resident of Oregon. In order to deliver malt beverages, wine or cider to a resident of Oregon, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine or cider to a resident of Oregon. The application shall include the for-hire carrier's plan for ensuring that:

(a) Only persons age 18 or over will be used to deliver the alcohol to the resident;

(b) The person used to deliver the alcohol will verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) The person used to deliver the alcohol will determine that the person receiving the alcohol is not visibly intoxicated;

(d) If the alcohol is delivered on the same day the order is received, the alcohol must be delivered before 9:00 pm;

(e) The alcohol is delivered only to a home or business where the home or business has a permanent street address;

(f) Any package containing alcohol is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission; and

(g) Information is collected that must be retained by the for-hire carrier for a minimum of eighteen months from the date of delivering the alcohol. The information may be collected and retained electronically (if the carrier so chooses) and must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information which can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(2) Delivery to a licensee of the Commission. In order to deliver malt beverages, wine or cider to a licensee of the Commission, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine or cider to a licensee.

(3) A for-hire carrier:

(a) Must allow the Commission to audit the carrier's records which are directly related to alcohol deliveries in Oregon upon request and shall make those records available to the Commission in Oregon. The for-hire carrier must make these records available to the Commission no later than 60 days after the Commission mails the notice; and

(b) Consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(4) The Commission may revoke its approval of a for-hire carrier's plan if the for-hire carrier fails to follow the plan approved by the Commission or comply with the provisions of this rule. A revocation under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.282
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-005-0425

Qualifications for Wine Self-Distribution Permit for Wine and Cider

ORS 471.274 allows a manufacturer of wine or cider with a Wine Self-Distribution Permit to sell and ship wine and cider that the manufacturer produced directly to the Commission or to retail licensees of the Commission who hold a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit. This rule sets the qualifications to obtain a Wine Self-Distribution Permit.

(1) In order to qualify for a Wine Self-Distribution Permit, a person must:

(a) Hold a valid license issued by another state within the United States that authorizes the manufacture of wine or cider;

(b) Hold a valid Certificate of Approval issued under ORS 471.244; and

(c) Hold a bond or other security, as described in ORS 471.155, in the minimum amount of $1,000.

(2) Application. A person must make application to the Commission upon forms to be furnished by the Commission and receive a Wine Self-Distribution Permit from the Commission before shipping any wine or cider directly to retail licensees of the Commission. The application shall include:

(a) A true copy of the applicant's license and any information required by the Commission to establish that the license authorizes the manufacture of wine or cider;

(b) A statement that the person understands and will follow Oregon's alcohol laws and rules regarding wine self-distribution, tied-house and financial assistance prohibitions, and wine and cider privilege tax;

(c) Proof of a valid Certificate of Approval issued under ORS 471.244;

(d) A $100 fee; and

(e) Proof of posting a bond or other security, as described in ORS 471.155, in the minimum amount of $1,000.

(3) The Commission may refuse to process any application required under this rule that is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

(4) The Commission may revoke or refuse to issue or renew a Wine Self-Distribution Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.272 & 471.274
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-005-0426

Qualifications for Retailer Endorsement to Receive Wine or Cider from the Holder of a Wine Self-Distribution Permit

ORS 471.274 allows a retail licensee to receive wine or cider from the holder of a Wine Self-Distribution Permit if the retail licensee has received prior authorization from the Commission via license endorsement. This rule sets the qualifications to obtain this endorsement.

(1) Only retail licensees with one or more of the following licenses may qualify to receive wine or cider at the licensed premises from the holder of a Wine Self-Distribution Permit:

(a) An off-premises license issued under ORS 471.186.

(b) A full on-premises licensed issued under ORS 471.175.

(c) A limited on-premises license issued under ORS 471.178.

(d) A brewery-public house license issued under ORS 471.200.

(e) A temporary sales license issued under ORS 471.190.

(2)(a) Application. A retail licensee must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before receiving any wine or cider from a person with a Wine Self-Distribution Permit. The application shall include:

(b) A statement that the applicant understands and will comply with the reporting requirements listed in OAR 845-006-0401.

(3) The Commission may refuse to process any application not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.274 & 471.404
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-006-0391
Definitions

As used in OAR 845-006-0391 through 845-006-0401:

(1) The term "ship" means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term "deliver" has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.

(2) "Same-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine or cider on the same day the person receives the order from the customer.

(3) "Next-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine or cider after the day the person receives the order from the customer.

(4) "For-hire carrier" means any person or company who holds itself out to the public as willing to transport property in return for compensation. The term "for-hire carrier" can include a common carrier.

(5) "Month" means a calendar month.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.282
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-006-0392
Requirements for Direct Shipment of Wine and Cider to a Resident of Oregon

(1) A person may sell and ship wine or cider to a resident of Oregon only if the person holds:

(a) A valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit; or

(b) An off-premises sales license issued by the Commission.

(2) A person holding a Direct Shipper Permit must ship not more than a total of two cases of wine or cider containing not more than nine liters per case per month to a resident of Oregon who is at least 21 years of age.

(3) A person holding a Direct Shipper Permit or an off-premises sales license must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(4) A person holding a Direct Shipper Permit or an off-premises sales license must ship:

(a) Only wine or cider and only in manufacturer-sealed containers;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the wine or cider is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The product in a container that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the wine or cider that is received by the permit holder or licensee prior to shipment of the alcohol;

(f) Only for next-day delivery, unless the permit holder or licensee has been approved for same-day delivery; and

(g) Only to a home or business where the home or business has a permanent street address.

(5) If the permit holder or licensee ships via a for-hire carrier, the permit holder and licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 and must comply with sections (2), (3), and (4) of this rule, as applicable.

(6) If the permit holder or licensee does not use a for-hire carrier, in addition to complying with sections (2), (3), and (4) of this rule, as applicable, the person making the delivery of the wine or cider must:

(a) Be age 18 or over;

(b) Verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the permit holder or licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information may be collected and retained electronically (if the permit holder or licensee so chooses) and must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information that can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(7) Same-day delivery for a permit holder. If a permit holder has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (2), (3), (4), and either (5) or (6) of this rule, the permit holder must receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day to a resident of Oregon (and must also follow section (2) of this rule).

(8) Same-day delivery for a licensee. If a licensee has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (3), (4), and either (5) or (6) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day to a resident of Oregon; or

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider if the alcohol accounts for no more than 25 percent of the retail cost of the order (at least 75 percent of the retail cost of the order must be items other than alcohol); or

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider.

(9) A permit holder must:

(a) Allow the Commission to audit the permit holder's records of wine and cider shipments to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(b) Report to the Commission all shipments of wine or cider made to a resident of Oregon under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on wine and cider sold and shipped directly to a resident of Oregon under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax.

(10) If the permit holder is located in a state outside of Oregon, it consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(11) A violation of section (9) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for shipping wine or cider without a valid Direct Shipper Permit in violation of section (1) of this rule against any Oregon license held by the

shipper, including a Certificate of Approval issued pursuant to ORS 471.289.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.186 & 471.730(1) & (5)
Stats. Implemented: ORS 471.186, 471.282 & 473
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-006-0396
Requirements for Same-Day and Next-Day Retail Delivery of Malt Beverages to Residents of Oregon

This rule sets the requirements for same-day and next-day delivery of malt beverages to a resident of Oregon. A licensee must be approved by the Commission under OAR 845-005-0420 in order to provide same-day delivery of malt beverages.

(1) A licensee qualified to make same-day or next-day delivery of malt beverages under OAR 845-005-0420 must ship:

(a) Only malt beverages and only in a manufacturer-sealed container. A container must not hold more than two and one-quarter gallons;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the malt beverage is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The malt beverage in a package that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the malt beverage that is received by the licensee prior to shipment of the alcohol;

(f) Only for next-day delivery unless the licensee has been approved for same-day delivery by the Commission; and

(g) Only to a home or business where the home or business has a permanent street address.

(2) A licensee must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(3) If the licensee ships via a for-hire carrier, in addition to complying with sections (1) and (2) of this rule, the licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424.

(4) If the licensee does not use a for-hire carrier, in addition to complying with sections (1) and (2) of this rule, the person delivering the malt beverage must:

(a) Be age 18 or over;

(b) Verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information may be collected and retained electronically (if the licensee so chooses) and must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information which can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(5) Same-day delivery. If the licensee is approved to make same-day delivery of malt beverages, in addition to complying with sections (1), (2), and either (3) or (4) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and deliver not more than a total of five gallons of malt beverage per day to a resident of Oregon; or

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage if the alcohol accounts for no more than 25 percent of the retail cost of the order (at least 75 percent of the retail cost of the order must be items other than alcohol); or

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage.

(6) Sanction. A violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-006-0400
Requirements for Wine Self-Distribution Permit for Wine and Cider

OAR 845-005-0425 sets the qualifications for a Wine Self-Distribution Permit. This rule sets the requirements for self-distribution of wine or cider.

(1) A person holding a Wine Self-Distribution Permit:

(a) May ship only wine or cider;

(b) May ship only to a retail licensee at an address holding a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit;

(c) Shall keep a record of all shipment of wine or cider to Oregon licensees, including the name of the licensee, the date of shipment and the amount of wine or cider shipped, and shall retain such records for a minimum of two years from the date of the shipment. The permit holder must report to the Commission all shipment of wine or cider made to retail licensees under the permit as required by ORS Chapter 473. The report must be in a form prescribed by the Commission;

(d) Must allow the Commission to audit the permit holder's records upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(e) Consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules;

(f) Must timely pay to the Commission all taxes imposed under ORS Chapter 473 on all wine or cider sold and shipped directly under the permit. The permit holder, not the retail licensee, is responsible for the tax; and

(g) Must follow Oregon's alcohol laws and rules regarding wine self-distribution, tied-house and financial assistance prohibitions, and wine and cider privilege tax.

(2) If the permit holder ships wine or cider to a retail licensee via a for-hire carrier, the permit holder must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424.

(3) If the permit holder does not use a for-hire carrier with an approved plan, the permit holder must ensure that at the time the wine or cider is received by a retail licensee of the Commission the person delivering the wine or cider verifies that the retail licensee holds a valid endorsement issued by the Commission authorizing the receipt of the wine or cider from the permittee.

(4) A manufacturer may self-distribute wine or cider only if the manufacturer holds a valid Wine Self-Distribution Permit and a valid license issued by another state that qualifies the manufacturer to hold a Wine Self-Distribution Permit.

(5) A violation of any section of this rule is a Category IV violation. Self-distribution of wine or cider without a valid Wine Self-Distribution Permit issued by the Commission is grounds for revocation of the manufacturer's Certificate of Approval issued under ORS 471.289.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.272 & 471.274
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-006-0401
Requirements for Oregon Retailers to Receive Wine or Cider from the Holder of a Wine Self-Distribution Permit

OAR 845-005-0426 sets the qualifications for obtaining Commission approval to receive wine and cider from the holder of a wine self-distribution permit. This rule sets the requirements for receiving wine or cider from the holder of a Wine Self-Distribution Permit.

(1) No Oregon retail licensee may receive wine or cider directly from an out of state manufacturer via self-distribution unless the retail licensee has first applied for and received an endorsement pursuant to OAR 845-005-0426. No retail licensee may receive wine or cider via self-distribution unless the manufacturer supplying the wine or cider holds a valid Wine Self-Distribution Permit.

(2) The wine or cider must be received only at an address with a current and valid retail liquor license issued by the Commission and must not be for the purpose of distribution.

(3) Retail licensees holding an endorsement must retain the purchase records showing the amount of wine and cider received from each Wine Self-Distribution Permit holder for a minimum of two years from the date of receipt of the wine or cider.

(4) Except as described in section (5) of this rule, all retail licensees approved under OAR 845-005-0426 must report to the Commission on or before the 20th day of each month on a form prescribed by the Commission the quantity of wine and cider received from Wine Self-Distribution Permit

holders during the preceding calendar month and the names of the permit holders from whom the wine or cider was received.

(5) The holder of a full or limited on-premises sales license and with an endorsement approved under OAR 845-005-0426 is not required to file a report for wine received in any month in which the licensee receives a total from all holders of Wine Self-Distribution Permits of two or fewer cases (containing a total of eighteen or fewer liters) of wine.

(6) A violation of any section of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.274 & 471.404
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-015-0141
Shipment of Distilled Spirits

All sales of distilled spirits to individual consumers must be made in-person at a retail liquor store location. A retail sales agent may ship distilled spirits purchased in-person to a resident of Oregon who is at least 21 years of age. In-person purchases may be shipped to a resident of a state other than Oregon only in accordance with the laws of that state.

Stat. Auth.: ORS 471, including 471.030 & 471.730(1) & (5)
Stats. Implemented: ORS 471.740 & ORS 471.750
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

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

845-004-0001
Prohibited Interests in the Alcoholic Beverage Industry

(1) Definitions: As used in ORS 471.710 and this rule:

(a) "Employed by the Commission" means any permanent, temporary or limited duration Commission employee;

(b) "Financial Interest" means knowingly having an ownership interest, as a sole proprietor, partner, limited partner or stockholder in a business licensed by the Commission or any manufacturer of alcoholic beverages sold in Oregon;

(c) "Business Licensed by the Commission" means a business or that part of a business which requires an alcoholic beverage license to operate. A person is "employed by a business licensed by the Commission" if:

(A) That person's job duties include involvement with that portion of the business that requires an alcoholic beverage license to operate; or

(B) That person exercises management control over that portion of the business that requires an alcoholic beverage license to operate.

(d) "Business Connections" include, but are not limited to, the following:

(A) Knowingly providing anything of value to a manufacturer or a business licensed by the Commission in return for something of value. This rule does not, however, prohibit persons and licensees from providing commodities and services to each other that they routinely provide to the general public under the same terms;

(B) Partnerships with a manufacturer or licensee and similar ventures formed for the purpose of making a profit.

(e) "Knowingly" means a person actually knew or reasonably should have known;

(f) "Household" means all persons living as a family unit in the same dwelling;

(g) "Immediate Family" means spouse or Domestic Partner, and juvenile dependent children;

(h) "Position to Take Action or Make Decisions Which Could Affect the Licensed Business" means that the employee's job duties include the discretion to take actions or make decisions that are reasonably likely to create more than a trivial cost or benefit for a licensed business in money, time or anything else of value. An employee is not in a position to "take action or make decisions which could affect the licensed business" under ORS 471.710(2)(c) and (d) if the Commission removes the employee from actions and decisions affecting the licensed business. The Commission will do so where the removal would not unreasonably affect the employee's ability to perform his/her job duties.

(i) "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.

(2) Additional Prohibitions:

(a) Employment: No commissioner or employee may be employed by a business licensed by the Commission, unless the commissioner or employee is not in a position to take action or make decisions which would affect the licensed business;

(b) Close Association: As used in this section, "close association" means a relationship that would or would reasonably be perceived to influence commissioner or employee decisions. A commissioner or employee who has a close association with an alcoholic beverage licensee:

(A) Will inform the Commission of the association as soon as the commissioner or employee knows about the association; and

(B) Will not participate in a decision that directly affects this licensee.

(3) Reporting Requirements:

(a) All applicants for Commission jobs must complete and sign a form describing any financial interest or business connection the applicant or any person in the applicant's household or immediate family has with the alcoholic beverage industry that the applicant would reasonably know of. The Commission will determine whether any prohibited interest or connection exists. An applicant or person in the applicant's household or immediate family who has a prohibited interest or connection must divest the interest or connection before the Commission hires the applicant;

(b) An employee must report any prohibited interest or connection with the alcoholic beverage industry to the employee's supervisor as soon as the employee would reasonably know of the interest or connection. If ORS 471.710 or this rule prohibits the interest or connection, the Commission will set a reasonable time period for divestiture. If the employee, household member or immediate family member fails to divest, the Commission will terminate the employee's employment with the Commission. An employee who has a prohibited interest in or connection with an alcoholic beverage retailer, wholesaler or manufacturer will not participate in any licensing or compliance decisions involving the retailer, wholesaler or manufacturer.

(4) Disciplinary actions: The Commission will appropriately discipline an employee who:

(a) Fails to report a prohibited interest or connection as section (2) of this rule requires;

(b) Knowingly acquires an interest or establishes a connection that ORS 471.710 or this rule prohibits.

Stat. Auth.: ORS 471 including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.710
Hist.: OLCC 4-1988, f. & cert. ef. 7-1-88; OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

845-005-0311
True Name on Application; Interest in Business

(1) True name on application: Applications for licenses must specify the real and true names of all persons who own or have an interest in the business proposed to be licensed by the Commission, and these persons or in the case of corporations, a duly authorized officer, must sign the application.

(2) License privileges: The license privileges are available only to the persons specified in the application and only for the premises designated on the license.

(3) Interest in the business: For purposes of section (1) of this rule, the following persons have an "interest in the business":

(a) Any person who receives or is entitled to receive, directly or indirectly, any of the profits of a licensed business except persons who receive any of the profits as:

(A) A bonus paid to an employee, if the employee is on a fixed wage or salary and the bonus is not more than 25 percent of the employee's pre-bonus annual compensation, or the bonus is based on a written incentive/bonus program and is not unreasonable or out of the ordinary for the services rendered;

(B) Repayment of a loan or payment on a contract to purchase property unless the loan or contract holder exercises control over or participates in the management of the business;

(C) Reasonable payment for rent under a bona fide lease or rental obligation unless the lessor or property manager exercises control over or participates in the management of the business;

(D) Reasonable payment for a franchise under a bona fide franchise agreement;

(E) Payment of dividends to corporate stockholders.

(b) A person who does not receive any of the profits but receives compensation that is out of the ordinary for the services rendered. "Out of the ordinary" includes both over and under compensations;

(c) Any person or firm who contracts to provide food service or to manage or operate any part of the licensed premises, other than as an employee;

(d) Any person who invests money or other property in the licensed business, other than a stockholder. Any stockholder who owns ten percent or more stock must receive Commission approval (OAR 845-006-0475). For purposes of this subsection, a bona fide loan that entitles the lender to a return of only the principal and interest on the principal is not an investment;

(e) A contract purchaser of a licensed business. A contract purchaser may not operate or invest prior to Commission approval. A contract purchaser may make contract payments into an escrow account prior to Commission approval of the change of ownership, but may not operate the business other than as an employee.

(4) ORS 471.757 allows the Commission to deny, cancel or suspend a license if an unlicensable person has any financial interest in the licensed business or place of business. For purposes of ORS 471.757, financial interest exists if a person may financially benefit or suffer based on the performance of the licensed business. Examples of persons having a financial interest in the business include:

(a) Any person who rents or leases property to or for the licensed business;

(b) Any person who invests or loans money or other property for the licensed business;

(c) Any person who gives money or property for the licensed business and who

(A) Exercises control over or participates in the management of the licensed business; or

(B) Is employed by the licensed business; or

(d) The spouse or domestic partner of the licensee or license applicant. For purposes of this rule, domestic partners (lower case) are individuals who share the same regular and permanent address and who share joint financial assets, resources, accounts or obligations, such as home ownership, checking or banking accounts, brokerage accounts or health care coverage. Domestic partner (lower case) also includes a "Domestic Partner" (upper case), which means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(5) For good cause shown, the Commission may waive the requirements in this rule to take into account unusual or extraordinary circumstances.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.757
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2002, f. 6-12-02 cert. ef. 7-1-02; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

845-006-0335
Age Verification; Minors on Licensed Premises

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages, or is in an area prohibited to minors, if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

(2) Sanctions for Failure to Verify Age:

(a) The Commission will sanction a licensee or permittee who does not verify the age of a person who appears to be under the age of 26 only if the person:

(A) Actually is a minor who buys, is served or drinks an alcoholic beverage at the licensed premises (Category III violation); or

(B) Actually is a minor who is in an area of the licensed premises prohibited to minors (Category IV violation).

(b) If the Commission sanctions a licensee or permittee for selling to or serving a minor, allowing a minor to drink or allowing a minor in an area prohibited to minors, the Commission will not also sanction the licensee or permittee for failure to verify age;

(c) Failure to verify age as ORS 471.130 requires or to reject obviously altered or false identification is a Category III violation.

(3) Minors on Premises: General Prohibitions. No licensee, permittee, or licensee's employee will permit a minor:

(a) To buy, be served or drink any alcoholic beverage on licensed premises;

(b) To be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482, and this rule. (The assigned minor posting(s) describes where on the premises minors are allowed or prohibited. See OAR 845-006-0340, Minor Postings.)

(4) Minor Employee and Service Permittee:

(a) A minor employee may be in a Number II, III-A after 9 p.m., IV or V posted area only to restock supplies and do food service related activities such as setting and clearing tables and delivering food. In addition, a minor employee may be in a Number IV posted area to take orders for and serve food during the specified meal periods;

(b) A minor service permittee may do the duties described in subsection (a) of this section as well as the alcohol-related duties ORS 471.482 allow.

(5) Minor Vendor or Contractor. A minor, other than a licensee's employee, who has a legitimate business purpose, may be in the area of the licensed premises normally prohibited to minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area).

(6) Minor Entertainer:

(a) A minor entertainer may perform on licensed premises. If the minor entertainer stays on the premises when not performing, he/she must stay in an area where minors are permitted. If there is no break room, dressing room or patron area where minors are permitted, the licensee may, with prior Commission approval, designate space for minor entertainers in an area normally prohibited to them. At a minimum, the place must be within the bartender's sight but not at the bar, and there must be no alcoholic beverages in this place;

(b) If the minor is under 18 years old, and the licensee proposes to employ that minor to conduct or assist in conducting any public dance, including but not limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, the licensee and minor must make sure the minor has the written permission of the appropriate juvenile court judge as required by ORS 167.840(2).

(c) If the minor is under 18 years old, and the licensee proposes to employ that minor to perform or entertain on the licensed premises in a capacity other than described in (6)(b) of this rule, before allowing the minor to perform on the licensed premises the licensee must apply for and receive prior written permission from the Administrator of the Oregon Liquor Control Commission, or the Administrator's designee. Application must be made upon a form supplied by the Commission. The Administrator or designee shall grant such permission only if:

(A) The parents or legal guardians of the minor have consented to the child's participation in such activity; and

(B) The Administrator or designee has found that participation in such activity will not be inconsistent with the health, safety and morals of the minor.

(d) Minors under 14 years old must also get a work permit if one is required by the Oregon Bureau of Labor and Industries.

(7) Minor Patron: A minor patron may be in areas of licensed premises normally prohibited to minors in the following circumstances:

(a) If the licensee permits it, a minor may be in the immediate company of his/her spouse or Domestic Partner who is at least 21 years old.

"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. The minor must not buy, possess or drink alcoholic beverages;

(b) A minor may order and eat a meal in a Number IV posted area during the specified meal periods. This meal must at least meet the minimum food service requirements of OAR 845-006-0460.

(8) Sanctions: A violation of subsection (3)(a) of this rule is a Category III violation. A violation of subsection (3)(b) through section (7) of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including 471.030, 471.430 & 471.730
Stats. Implemented: ORS 471.430
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03; OLCC 13-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 4-2004, f. & cert. ef. 4-9-04; OLCC 9-2005, f. 11-21-05, cert. ef. 1-1-06; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

845-008-0045
Service to Guests by Full On-Premises Sales Licensees

(1) Purpose. The Commission grants Full On-Premises Sales licenses to private clubs so that they may sell and serve alcoholic beverages to members and guests. The purpose of this rule is to define member and guest.

(2) Prohibited Sale of Alcoholic Liquor. Licensees holding a Full On-Premises license may not sell or make alcoholic beverages available except to members and guests, as defined in this rule.

(3) Member Defined. A member is a person or entity who pays dues and has full time membership privileges in the club or who is a full time member of an organization that has reciprocal privileges with the club. An auxiliary member is a person or entity defined by charter or bylaw of the private club as having certain limited membership privileges. Auxiliary members do not have to sign in as guests at the club.

(4) Guests of Member. A guest is an individual who enjoys a bona fide guest-host relationship with a member at the private club. A bona fide guest-host relationship exists only if the individual:

(a) Is invited by a member and the member pays for all costs incurred by the guest, without reimbursement in whole or in part from anyone. The sponsoring member must be on the premises while the guest is on the premises. (Sign-in or guest list required);

(b) Is invited by the club and the club pays for all costs incurred by the individual without reimbursement in whole or in part from anyone. (Payment of standard membership fees and regular monthly dues by members does not constitute reimbursement);

(c) Is attending a family reunion of a member, or a wedding, wedding reception, or wedding anniversary of a member or of a person in a member's family;

(d) Was personally and individually invited by the member prior to arrival at the licensed premises, and is accompanied by the sponsoring member at all reasonable times while in the licensed premises. (Sign-in or guest list required). However, if a member invites more than ten individuals affiliated with the same company, firm, or organization, the Commission will consider the invitation to be based on that affiliation. The Commission will not recognize this to be a bona fide guest host relationship under this subsection, unless the company, firm, or organization:

(A) Is a sole proprietorship, and the hosting member is the sole proprietor;

(B) Is a partnership, and the hosting member is a general partner;

(C) Is a corporation, and the hosting member is a major stockholder;

(D) Is itself a member or has been paying the hosting member's dues for at least three consecutive months prior to the activity. The member and a corporate officer or local general manager must sign an affidavit attesting to the fact that the corporation has been and will be paying all or part of the member's monthly dues. The club must keep the affidavit on file for at least one year after the activity;

(E) Is a fraternity, sorority, or alumni association, and the private club is organized primarily for members of those organizations;

(F) Is an organization made up of representatives of private clubs;

(G) Is another private club participating in an athletic exchange. (Sign-in or guest list required, unless prior approval is obtained);

(H) Is sponsoring a special activity, held no more than once per year, of the company, firm, or organization, if at least ten percent of the people attending the event are members of the private club. (Prior written authorization required).

(5) Guests of Club. In order to serve the public interest, an individual will be recognized as a bona fide guest of the club if the individual:

(a) Is participating in a special event specifically designed to provide significant economic benefit to a charity. (Prior written authorization required);

(b) Is participating in an activity that is being held in conjunction with a community-wide event or festival, such as Phil Sheridan Days and Junction City's Scandinavian Festival. (Prior written authorization required);

(c) Is participating in a sporting event that requires the special facilities of a private club. (Prior written authorization required).

(d) Is participating in an activity that no Full On-Premises Sales licensee in the area has facilities available to accommodate. (Prior written request required; sign-in or guest list required). For an activity to qualify under this subsection, the private club must send the Commission's nearest regional office a written request to host the activity and sell alcoholic beverages to the participants. The request must contain facts that show that the private club has the only adequate facilities available to accommodate the activity within a ten mile radius of the club. The Commission will determine adequacy of the facilities based on factors such as size, seating, and the willingness to provide desired food or equipment necessary for the activity. The Commission will also consider whether the facilities are available for the date and hours of the activity at a price competitive with other commercial establishments;

(A) The Commission will deny the request if it receives the written request less than 20 days before the activity, unless it determines that extraordinary circumstances exist. Therefore, if the request is not mailed to the Commission more than 20 days before the activity, the private club must explain in the request why it could not have been mailed earlier;

(B) The Commission may disapprove sale of alcoholic beverages at the activity if the request does not comply with the rule or if the Commission determines that the private club facilities are not the only adequate facilities available.

(6) Duty to Investigate. Private clubs must investigate when group reservations are made to ensure that non-members in the group are eligible to be treated as guests and served alcoholic beverages under this rule.

(7) Prior Approval. Private clubs must obtain prior written authorization from the Commission to host any activity described in subsections (5)(a) (special event for charity), (5)(b) (community-wide event), (5)(c) (special facilities), and (4)(d)(H) (special activity one time per year) of this rule. The Commission's nearest regional office must receive the request for approval at least 20 days before the activity, except in unforeseen circumstances. The Commission will notify the private club within ten working days after the receipt of the request whether the activity is approved or denied. Verbal notification shall be confirmed in writing.

(8) Guest List. Private clubs shall maintain a sign-in register or guest list showing the names of all guests, except those attending activities described in subsections (4)(c) (family reunions, wedding receptions), (5)(a) (special event for charity), (5)(b) (community-wide event), and (5)(c) (special facilities) of this rule. The register and list must also show names of sponsoring members and dates involved. They must be kept on the premises for at least one year. Guests attending activities described in subsection (4)(d)(G) (athletic exchange) of this rule must sign in unless the private club has received prior approval for the activity.

(9) Record Keeping. Private clubs shall keep on the premises for at least two years an accurate record of all activities, functions, or meetings hosted where more than ten guests were affiliated with the same company, firm, or organization. The record shall include the date, nature of activity, subsection of the rule under which the activity is authorized, name(s) of sponsoring member(s), if any, and number of people who attended. The record must be available for inspection by the Commission.

(10) Despite the prohibition of subsection (2) of this rule, a private club as defined in ORS 471.175(8) which is operating with a Full On-Premises Sales license may serve the general public if:

(a) The licensee has proposed in writing to the Commission to comply with the food service standards for commercial establishments, OAR 845-006-0460, the Commission has approved the proposal, and the club complies with the proposal; or

(b) The licensee's service to the general public is limited to hosting or holding an event that is alcohol-free.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.175 & 471.730(1) & (5)
Stats. Implemented: ORS 471.175
Hist.: LCC 22-1980, f. 7-22-80, ef. 10-1-80; Renumbered from 845-010-0770; LCC 8-1982, f. 8-27-82, ef. 10-1-82; LCC 11-1982(Temp), f. & ef. 12-3-82; LCC 1-1985, f. & ef. 2-7-85; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 8-2004, f. 6-29-04 cert. ef. 7-1-04; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

845-015-0118
Retail Sales Agent Prohibited Interests, ORS 471.710(3)

(1) Definitions: As used in ORS 471.710(3) and this rule:

(a) "Alcoholic beverage licensee" means the holder of a Distillery license, a Full On-Premises Sales license, or a distillery whose products are sold in Oregon.

(b) "Liquor Store Agent" has the same meaning as a retail sales agent, as defined in OAR 845-015-0101(6);

(c) "Financial Interest" means knowingly having an ownership interest, as a sole proprietor, partner, limited partner or stockholder or any direct or indirect ownership interest through a device such as a holding company, in a business licensed with a Distillery or Full On-Premises Sales license or any distillery whose products are sold in Oregon;

(d) "Business Connections" include, but are not limited to:

(A) Knowingly providing anything of value to a person or business licensed with a Distillery or Full On-Premises Sales license or to any distillery whose products are sold in Oregon, in return for something of value. This rule does not, however, prohibit persons and licensees from providing commodities and services to each other that they routinely provide to the general public under the same terms;

(B) Partnerships with a person or business licensed with a Distillery or Full On-Premises Sales license, or to any distillery whose products are sold in Oregon, and similar ventures formed for the purpose of making profit,

(e) "Knowingly" means a person actually knew or reasonably should have known;

(f) "Household" means all persons living as a family unit in the same dwelling;

(g) "Immediate Family" means spouse or Domestic Partner, and juvenile dependent children.

(h) "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.

(2) Additional Prohibitions:

(a) No retail sales agent or member of the agent's household or immediate family may be employed by a business that is licensed with a Distillery or Full On-Premises Sales license unless:

(A) The person's job duties do not include involvement with that portion of the business that requires an alcoholic beverage license to operate; or

(B) The person exercises no management control over that portion of the business that requires an alcoholic beverage license to operate.

(b) No retail sales agent or member of the agent's household or immediate family may be employed by any distillery whose products are sold in Oregon.

(3) Reporting Requirements:

(a) All retail sales agent applicants must complete and sign a form describing any financial interest or business connection the applicant or any person in the applicant's household or immediate family has, that the applicant would reasonably know of, with a Distiller or Full On-Premises Sales licensee, or with a distillery whose products are sold in Oregon. The Commission will determine whether any prohibited interest or connection exists. An applicant or person in the applicant's household or immediate family who has a prohibited interest or connection must divest the interest or connection before the Commission appoints the applicant;

(b) A retail sales agent must report, to the agent's district manager, any prohibited interest or connection with a Distillery, Full On-Premises Sales licensee or a distillery whose products are sold in Oregon as soon as the agent would reasonably know of the interest or connection. If ORS 471.710(3) or this rule prohibits the interest or connection, the Commission will set a reasonable time period for divestiture. If the retail sales agent, household member or immediate family member fails to divest, the Commission will terminate the agent's contract.

(4) Gifts and Gratuities: No retail sales agent will accept any gift, gratuity or thing of value from any alcoholic beverage licensee or any person representing a distillery, except that a retail sales agent may accept:

(a) Items totaling $25 or less per year per alcoholic beverage licensee offered to retail sales agents as customers of the licensee as long as the items are offered on an equal basis to all customers irrespective of any connection to the Commission;

(b) Food and beverages provided for immediate consumption at a convention or a business conference or meeting that are offered to all participants irrespective of any connection to the Commission;

(c) A non-alcoholic beverage for immediate consumption that a licensee offers at a business meeting;

(d) Items offered to all participants at a convention irrespective of any connection to the Commission.

(5) Disciplinary Actions: The Commission will appropriately discipline a retail sales agent who:

(a) Fails to report a prohibited interest or connection as section (2) of this rule requires;

(b) Knowingly acquires an interest or establishes a connection that ORS 471.710 or this rule prohibits; and

(c) Accepts a gift or gratuity that section (4) of this rule prohibits.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.710(3)
Hist.: OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0028; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

845-015-0148
Minors in Liquor Stores

Only people 21 years of age or older may enter a retail liquor store, unless accompanied by a parent, spouse or Domestic Partner who is at least 21 years old. "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. Nevertheless, people 18 years or older may be employed in liquor stores to sell distilled spirits and people under the age of 18 may be employed but may not participate in the sale of distilled spirits.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.750(1)
Hist.: LCC 4-1985, f. 2-28-85, ef. 4-1-85; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0060; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

845-015-0190
Resignation Buy-Out Program for Retail Liquor Agents

(1) Purpose. The purpose of the Resignation Buy-Out Program is to provide a monetary benefit to all retail liquor agents when they resign as a contracted liquor store agent. Retail liquor agents receive the buy-out, in part, to recognize their contribution in building a successful business.

(2) Definitions.

(a) "Solicit," "solicitation" and "soliciting" have the meaning given them under OAR 845-015-0145. These terms also include any act or contact directed at a specific business, Full On-Premises Sales licensee or other like entity for the purpose of asking, encouraging, suggesting, urging or persuading a specific business, Full On-Premises Sales licensee or other entity to purchase distilled spirits from a particular retail liquor store.

(b) "Full On-Premises Sales licensee" means any person or entity holding a Full On-Premises Sales license.

(c) "Commercial Accounts" means any business or association that purchases more than fifty 750 ml bottles of distilled spirits from the store in the twelve months immediately preceding turnover of the store to the incoming agent.

(d) "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.

(3) Calculating the Buy-Out. The Resignation Buy-Out Program requires the incoming retail liquor agent to pay the outgoing agent, or the agent's estate, an amount of money (called the buy-out) at the time of store takeover. The Commission calculates the buy-out by taking two percent of the stores average annual gross alcohol sales for the last five years. The Commission manages this transaction by including the buy-out amount in the information sheet that all applicants receive.

(4) Recruiting Qualified Applicants. The outgoing liquor agent may supplement the Commissions recruiting process to assure finding qualified applicants. If the Commissions recruiting process does not generate a qualified applicant, or the Commissioners do not appoint a new agent, the outgoing agent may continue to seek qualified applicants. If these efforts fail to result in a qualified applicant after 30 days, the outgoing agent will choose to postpone the resignation or to accept a lower buy-out amount. If the agent chooses to accept a lower buy-out, then the outgoing agent and the Commission will agree on a reasonable buy-out amount reduction. The Commission will then re-advertise the store vacancy with the reduced buy-out amount.

(5) Paying the Buy-Out. An incoming agent must pay a buy-out if the effective date of the incoming agent's appointment occurs when the program is in effect. The incoming agent provides full payment to the outgoing agent at the time of the store takeover. As a condition of eligibility for the buy-out, the outgoing agent must allow the incoming agent to spend a minimum of 12 working days in the store working productively together before the store takeover, unless the incoming agent declines the opportunity. During the 12-day period, the outgoing agent will introduce the incoming agent to Full On-Premises Sales licensees and commercial

accounts, and orient the incoming agent to all aspects of the store operation except the required training and information provided by Commission staff.

(6) Family Transfer of Agency When Agent Dies or is Disabled. If an agent dies or becomes unable to operate an agency due to the agent's disability, ORS 471.752(2) allows the Commission to give preference to a qualified surviving spouse or Domestic Partner, or child, or a qualified spouse or Domestic Partner, or child of the disabled agent, in the appointment of a successor agent. If the Commission does appoint a spouse or Domestic Partner, or child in this situation, the Commission will waive the buy-out requirement at the request of the outgoing agent or the agent's estate.

(7) Probationary Agents. Except as provided in section (9), an agent who resigns during their probationary period is eligible for a buy-out.

(8) Relocating, Adding, or Closing Stores. The Commission reserves the right to relocate any store, and to add or close stores. Neither the State of Oregon nor the Commission is liable for any changes in the volume of alcohol sales that may occur following the relocation of one or more stores, or from the addition or closure of one or more stores.

(9) Exceptions. Despite sections (1) and (3), a retail liquor agent is not eligible for a buy-out if:

(a) The Commission has terminated the agent for cause relating to fiscal irresponsibility or the agent has shortages that exceed the estimated amount of compensation due that agent. In these situations, the Commission receives the buy-out amount, deducts any dollars owed the State of Oregon, and gives the outgoing agent whatever dollars, if any, remain from the buy-out amount;

(b) The agent is under suspension;

(c) The agent is a temporary agent;

(d) The Commission takes over a store for reasons other than suspension or termination. In this situation, the outgoing agent is not eligible for a buy-out until the agent resigns and an incoming agent is appointed and takes over the store.

(e) The store does not turn over during the time the program is in effect; turnover occurs on the date of the final audit.

(10) Non-Compete Provision. If an outgoing agent participates in the buy-out program, the outgoing agent shall not solicit any Full On-Premises Sales licensee or commercial account (customers) of the retail liquor store the outgoing agent is leaving (store) for the purpose of selling or attempting to sell distilled spirits to such customers. The outgoing agent is also prohibited from using a customer list or any other information about the stores customers to assist any agent (other than the incoming agent) in soliciting the stores customers for the purpose of selling distilled spirits. The outgoing agent recognizes that she/he receives consideration for compliance with this section. The prohibitions in this section:

(a) Are limited to a two-year period. The Commission calculates the two-year prohibition beginning on the date the store is turned over to the incoming agent;

(b) Relate only to Full On-Premises Sales licensees and commercial accounts that have made a purchase from the store within the twelve months immediately preceding turnover of the store to the incoming agent;

(c) Apply only within:

(A) A geographic radius of ten miles from the location of the store if the store is located in a metropolitan or suburban area;

(B) A geographic radius of twenty-five miles from the location of the store for all other areas of the state;

(d) Do not prohibit an agent's ability to advertise under OAR 845-015-0130.

(11) Violation of Section (10). If, during the two-year period:

(a) An outgoing agent violates section (10) of this rule, the incoming agent may take legal action against the outgoing agent;

(b) An outgoing agent violates section (10) of this rule, the Commission may take legal action against the outgoing agent;

(c) The Commission terminates the Resignation Buy-Out Program, the non-compete provisions in section (10) remain in effect.

(12) No Contract Rights in Buy-Out. No agent shall have any entitlement to, or expectation of receiving, any buy-out. The institution and continuation or termination of the buy-out program constitutes unilateral regulatory action by the Commission, and gives no agent any contractual right or expectation in any buy-out payment. The Commission reserves the right to repeal or modify this rule, or otherwise terminate the buy-out program at any time.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) (5)
Stats. Implemented: ORS 471.750 & 471.752(2)
Hist.: OLCC 14-1996, f. 10-1-96, cert. ef. 1-1-97; OLCC 8-1998(Temp), f. & cert. ef. 9-18-98 thru 3-16-99; OLCC 4-1999, f. 2-16-99, cert. ef. 3-17-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0032; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

Oregon Medical Board
Chapter 847

Rule Caption: Grant authority to Board Executive Director to approve Interim Stipulated Orders.
Adm. Order No.: BME 13-2008(Temp)
Filed with Sec. of State: 5-16-2008
Certified to be Effective: 5-16-08 thru 10-31-08
Notice Publication Date:
Rules Adopted: 847-001-0030
Subject: Temporary rule grants authority to Board's Executive Director to approve Interim Stipulated Orders (limitation on license), so that Orders may become public information and be released to hospitals and health care facilities, in the interest of protecting the public.
Rules Coordinator: Diana M. Dolstra—(971) 673-2713

847-001-0030
Approval of Interim Stipulated Orders

(1) The Executive Director, via his/her signature, has the authority to grant approval of an Interim Stipulated Order that has been signed by a licensee of the Board.

(2) The Executive Director's signature grants approval of the Interim Stipulated Order which allows the Order to become a public document. As a public document, the Interim Stipulated Order may be released to hospitals, clinics, and other practice locations.

(3) The Executive Director shall forward Interim Stipulated Orders to the Board in a timely manner.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265 & 677.275
Hist.: BME 13-2008(Temp), f. & cert. ef. 5-16-08 thr 10-31-08

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Conform rollovers rules to federal requirements.
Adm. Order No.: PERS 8-2008(Temp)
Filed with Sec. of State: 5-21-2008
Certified to be Effective: 5-21-08 thru 11-10-08
Notice Publication Date:
Rules Amended: 459-005-0591, 459-005-0595, 459-050-0090
Subject: The Pension Protection Act of 2006 (PPA) allows plan sponsors to permit participants receiving eligible rollover distributions to roll the distributions to a Roth IRA. The IRS has recently indicated that it is mandatory for plan sponsors to offer this option to plan participants. Accordingly, PERS must amend these administrative rules to reflect the ability, retroactive to January 1, 2008.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-005-0591
Definitions — Direct Rollovers

As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases shall have the following meanings:

(1) "Code" means the Internal Revenue Code of 1986, as amended.

(2) A "direct rollover" means the payment of an eligible rollover distribution by PERS to an eligible retirement plan specified by the distributee.

(3) A "distributee" includes a PERS member, the surviving spouse of a deceased PERS member, a non-spouse beneficiary of the member that is a designated beneficiary under Code Section 402(c)(11), and the current or former spouse of a PERS member who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 238.465 and the rules adopted thereunder.

(4) An "eligible retirement plan" means any one of the following:

(a) An individual retirement account or annuity described in Code Section 408(a) or (b), including a Roth IRA as described in Code Section 408A;

(b) An annuity plan described in Code Section 403(a) that accepts the distributee's eligible rollover distribution;

(c) A qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution;

(d) An eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code

Section 457(e)(1)(A) and accepts the distributee's eligible rollover distribution.

(e) An annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution.

(f) For the purposes of ORS 237.650(3), the individual employee account maintained for a member under the Individual Account Program as set forth under 238A.350(2); and

(g) For the purposes of ORS 237.655(2), the state deferred compensation program.

(5) An "eligible rollover distribution" means any distribution of all or any portion of a distributee's PERS benefit, except that an eligible rollover distribution shall not include:

(a) Any distribution that is one of a series of substantially equal periodic payment made no less frequently than annually for the life (or life expectancy) of the distributee or the joint lives (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent that it is a required or minimum distribution under Code Section 401(a)(9).

(6) A "recipient plan" means an eligible retirement plan that is designated by a distributee to receive a direct rollover.

(7) The provisions of this rule are effective on January 1, 2008.

Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 238 & 238A
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 1-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 3-2002, f. & cert. ef. 3-26-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 3-2005, f. & cert. ef 1-31-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef. 7-26-07; PERS 8-2008(Temp), f. & cert. ef. 5-21-08 thru 11-10-08

459-005-0595
Limitations — Direct Rollovers

(1) Notwithstanding any provision to the contrary in OAR 459-005-0590 to 459-005-0599, a distributee's right to elect a direct rollover is subject to the following limitations:

(a) A distributee may elect to have an eligible rollover distribution paid in a direct rollover to only one eligible retirement plan.

(b) A distributee may elect a direct rollover only when his or her eligible rollover distribution(s) during a calendar year is reasonably expected to total $200 or more.

(c) A distributee may elect to have part of an eligible rollover distribution be paid directly to the distributee, and to have part of the distribution paid as a direct rollover only if the member elects to have at least $500 transferred to the eligible retirement plan.

(2)(a) The provisions of subsection (1)(a) apply to any portion of a distribution, including after-tax employee contributions that are not includible in gross income.

(b) Any portion of a distribution that consists of after-tax employee contributions that are not includible in gross income may be transferred only to:

(A) An individual retirement account or annuity described in Code Section 408(a) or (b), including a Roth IRA; or

(B) An annuity contract described in Code Section 403(b) or a qualified defined contribution or defined benefit plan that agrees to separately account for the amounts transferred, including separate accounting for the pre-tax and post-tax amounts.

(c) The amount transferred shall be treated as consisting first of the portion of the distribution that is includible in gross income, determined without regard to Code Section 402(c)(1).

(3) The provisions of this rule are effective on January 1, 2008.

Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 238 & 238A
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef. 7-26-07; PERS 8-2008(Temp), f. & cert. ef. 5-21-08 thru 11-10-08

459-050-0090
Direct Rollover

The purpose of this rule is to establish the criteria and process for a direct rollover (a transfer made from trustee to trustee) by the Deferred Compensation Program to an eligible retirement plan and to establish the criteria and process for the Deferred Compensation Program to accept an eligible rollover distribution from another eligible retirement plan. This rule shall apply to any direct rollover distribution received by the Deferred Compensation Program on behalf of a participant and any request for distribution from a Deferred Compensation Program account processed on or after January 1, 2008.

(1) Definitions. The following definitions apply for the purpose of this rule:

(a) "Code" means the Internal Revenue Code of 1986, as amended.

(b) "Direct Rollover" means:

(A) The payment of an eligible rollover distribution by the Deferred Compensation Plan to an eligible retirement plan specified by the distributee; or

(B) The payment of an eligible rollover distribution by an eligible retirement plan to the Deferred Compensation Program.

(c) "Distributee" means:

(A) A Deferred Compensation Plan participant who has a severance of employment;

(B) A Deferred Compensation Plan participant who is approved for a de minimis distribution under OAR 459-050-0075(1);

(C) The surviving spouse of a deceased participant;

(D) The spouse or former spouse who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to 459-050-0250; or

(E) The non-spouse beneficiary of a deceased participant who is a designated beneficiary under Code Section 402(c)(11).

(d) "Distributing Plan" means an eligible retirement plan that is designated to distribute a direct rollover to another eligible plan (recipient plan).

(e) "Eligible Retirement Plan" means any one of the following that accepts the distributee's eligible rollover distribution:

(A) An individual retirement account or annuity described in Code Section 408(a) or (b), including a Roth IRA as described in Code Section 408(A);

(B) An annuity plan described in Code Section 403(a);

(C) An annuity contract described in Code Section 403(b);

(D) A qualified trust described in Code Section 401(a);

(E) An eligible deferred compensation plan described in Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(F) A plan described in Code Section 401(k).

(f) "Eligible Rollover Distribution" means a distribution of all or a portion of a distributee's Deferred Compensation account. An eligible rollover distribution shall not include:

(A) A distribution that is one of a series of substantially equal periodic payments made no less frequently than annually for the life (or life expectancy) of the distributee or the joint lives (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(B) A distribution that is a required or minimum distribution under Code Section 401(a)(9);

(C) An amount that is distributed due to an unforeseen emergency under OAR 459-050-0075(2).

(g) "Recipient Plan" means an eligible retirement plan that is designated by a distributee to receive a direct rollover.

(2) Direct rollover to an eligible retirement plan. The direct rollover of an eligible rollover distribution by the Deferred Compensation Program to an eligible retirement plan shall be interpreted and administered in accordance with Code Section 457(d)(1)(C) and all applicable regulations. A distributee may elect to have an eligible rollover distribution paid by the Deferred Compensation Program directly to an eligible retirement plan specified by the distributee.

(a) The Deferred Compensation Program staff shall provide each distributee with a written explanation of the direct rollover rules for an eligible distribution, as required by the Code.

(b) A distributee's right to elect a direct rollover is subject to the following limitations:

(A) A distributee may elect to have an eligible rollover distribution paid as a direct rollover to only one eligible retirement plan.

(B) A distributee may elect to have part of an eligible rollover distribution be paid directly to the distributee, and to have part of the distribution paid as a direct rollover only if the distributee elects to have at least $500 transferred to the eligible retirement plan.

(c) A direct rollover election shall be in writing and must be signed by the distributee or by his or her authorized representative pursuant to a valid power of attorney. The direct rollover election may be on forms furnished by the Deferred Compensation Program, or on forms submitted by recipient plan which must include:

(A) The distributee's full name;

(B) The distributee's social security number;

(C) The distributee's account number with recipient plan, if available;

(D) The name and complete mailing address of recipient plan; and

(E) If the distributee is a non-spouse beneficiary of the member, the title of the recipient IRA account.

(d) The distributee is responsible for determining that the recipient plan's administrator will accept the direct rollover for the benefit of the distributee. Any taxes or penalties that are the result of the distributee's failure to ascertain that the recipient plan will accept the direct rollover shall be the sole liability of the distributee.

(3) Direct rollover from an eligible retirement plan. On or after January 1, 2002, the Deferred Compensation Program shall only accept rollover contributions from participants and direct rollovers of distributions from an eligible retirement plan on behalf of a participant. Section (3) of this rule shall be interpreted and administered in accordance with Code Section 402(c) and all applicable regulations.

(a) The Deferred Compensation Program shall only accept pre-tax assets. After-tax employee contributions are not eligible for rollover into the Deferred Compensation Program.

(A) The Deferred Compensation Program may require that a direct rollover from an eligible deferred compensation plan described in Code Section 457(b) plan include or be accompanied by a statement by the participant's previous employer or the plan administrator that the distribution is eligible for rollover treatment.

(B) A direct rollover from an eligible retirement plan other than a Deferred Compensation Plan described in Code Section 457(b) must be an eligible rollover distribution. It is the participant's responsibility to determine that the assets qualify for rollover treatment. Any taxes or penalties that are the result of the participant's failure to ascertain that the distributing plan assets qualify for a direct rollover to a deferred compensation plan described in Code Section 457(b), shall be the sole liability of the distributee.

(b) Subject to the requirements of subsections (3)(b)(A) and (B) below, eligible rollover distribution(s) shall be credited to the participant's Deferred Compensation account established pursuant to the Plan and Agreement on file with the Deferred Compensation Program and shall be subject to all the terms and provisions of the Plan and Agreement. Account assets received from the distributing plan will be invested by the Deferred Compensation Plan record keeper in accordance with the terms and conditions of the Deferred Compensation Program according to the asset allocation the participant has established for monthly contributions unless instructed otherwise in writing on forms provided by the Deferred Compensation Program.

(A) Assets from an eligible deferred compensation plan account described in Code Section 457(b) will be aggregated with the participant's accumulated Deferred Compensation Plan account.

(B) Assets from an eligible retirement plan other than a Deferred Compensation Plan described in Code Section 457(b) will be segregated into a separate account established by the Deferred Compensation Program for tax purposes only, but not for investment purposes. For investment purposes, the participant's assets are treated as a single account. If a participant changes the allocation of existing assets among investment options within the plan, the transfer or reallocation shall apply to and will occur in all accounts automatically.

(c) Assets directly rolled over to the Deferred Compensation Program may be subject to the 10 percent penalty on early withdrawal to the extent that the funds directly rolled over are attributable to rollovers from a qualified plan, a 403(b) annuity, or an individual retirement account.

Stat. Auth: ORS 243.470
Stats. Implemented: ORS 243.401 - 243.507
Hist.: PERS 2-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 5-2007(Temp), f. & cert. ef. 2-16-07 thru 8-14-07; PERS 9-2007, f. & cert. ef. 7-26-07; PERS 8-2008(Temp), f. & cert. ef. 5-21-08 thru 11-10-08

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Rule Caption: Modifications permit creditable service for certain retroactive payments and revise provisions regarding retroactive payments.
Adm. Order No.: PERS 9-2008
Filed with Sec. of State: 5-21-2008
Certified to be Effective: 5-21-08
Notice Publication Date: 4-1-2008
Rules Amended: 459-010-0014, 459-010-0042
Subject: These rules would establish parameters for providing creditable service to an employee who receives a retroactive payment of wages incident to resolving an employment dispute. More specifically:

OAR 459-010-0014: This rule provides standards used to determine the accrual of creditable service in the PERS Chapter 238 Program. The rule was modified to reference the accrual of creditable service incident to a retroactive payment under OAR 459-010-0042.

OAR 459-010-0042: This rule outlines the administration of retroactive salary payments. The modifications to the rule clarify the definition of "retroactive payment" and provide standards for allocating such payments. The modifications further clarify that payments allocated to periods of non-membership will not trigger contributions or benefits. Also, a condition to receiving creditable service for periods to which retroactive payments are attributed is that the employee be an active member on the date of the retroactive payment. It also clarifies the time limit within which a member who receives a retroactive payment may restore rights forfeited by withdrawal during the period of absence. Lastly, the rule applies retroactively to July 31, 2003, the effective date of the statutory changes, to provide for consistency in the administration of retroactive payment and creditable service determinations.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-010-0014
Creditable Service in PERS Chapter 238 Program

(1) For purposes of this rule:

(a) "Active member" has the same meaning as provided in ORS 238.005(12)(b).

(b) "Creditable service" has the same meaning as provided in ORS 238.005(5).

(c) "Major fraction of a month" means a minimum of 50 hours in any calendar month in which an active member is being paid a salary by a participating public employer and for which benefits under ORS Chapter 238 are funded by employer contributions.

(2) An active member accrues one month of creditable service for each month in which the member performs service for the major fraction of the month.

(3) An active member is presumed to have performed service for a major fraction of a month if:

(a) The member performs at least 600 hours of service in the calendar year and the member's employer(s) reports salary and hours for a pay period occurring within the calendar month;

(b) The member starts employment on or before the 15th day of the calendar month and the employment continues through the end of the month;

(c) The member starts employment on or before the first day of the calendar month and ends employment on or after the 16th day of the month; or

(d) The member starts employment on or before the first day of the calendar month and ends employment before the 16th day of the month, but is reemployed in a qualifying position before the end of the month.

(4) A member or employer may seek to rebut the determination of creditable service based on the presumptions in section (3) by providing to PERS records that establish that the member did or did not perform service for a major fraction of a month as defined in subsection (1)(c) of this rule.

(5) Sections (2) and (3) of this rule notwithstanding, an active member who is a school employee will accrue six months of creditable service if the member performs service for all portions of a school year that fall between January 1 and June 30, and six months of creditable service if the member performs service for all portions of a school year that fall between July 1 and December 31.

(6) A member may accrue creditable service as provided in OAR 459-010-0042(3).

(7) A member may not accrue more than one month of creditable service for any calendar month and no more than one year of creditable service for any calendar year.

(8) The provisions of this rule are effective for service credit determinations made on or after January 1, 2008.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005 & 238.300
Hist.: PERS 6-2005, f. & cert. ef. 2-22-05; PERS 24-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 15-2007, f. & cert. ef. 11-23-07; PERS 1-2008(Temp), f. & cert. ef. 4-2-08 thru 9-26-08; PERS 9-2008, f. & cert. ef. 5-21-08

459-010-0042
Retroactive Salary Payments

(1) For the purpose of this rule, "retroactive payment" means a payment of salary attributable to a prior period made pursuant to a court order, administrative order, arbitration award, conciliation agreement, or private settlement agreement that resolves a dispute or claim based upon an employee's rights under employment and wage law or a collective bargaining agreement.

(2) A retroactive payment must be allocated to the period(s) in which the work was done or would have been done and deemed paid as so allocated pursuant to ORS 238.005(21)(b)(C). Payments allocated to any period during which the employee was an active or inactive member must be used in the determination of employee and employer contributions and in the calculation of benefits. Payments allocated to any period of non-membership or retired membership must not be used to determine contributions or calculate benefits.

(3) Except as provided in OAR 459-010-0014(7), an employee who is an active member on the date of a retroactive payment will receive creditable service for those periods of active or inactive membership to which the payment is allocated.

(4) An employee who is terminated from employment, withdraws the member account under ORS 238.265, and is reinstated to employment in connection with a retroactive payment may restore membership and service rights as provided in OAR 459-011-0050 within the time period described in Section (2) of that rule or within one year from the date the employee actually returns to employment, whichever is later.

(5) The provisions of this rule apply to retroactive payments made on or after July 31, 2003.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005, 238.105
Hist.: PERS 12-1998, f. & cert. ef. 12-17-98; PERS 1-2008(Temp), f. & cert. ef. 4-2-08 thru 9-26-08; PERS 9-2008, f. & cert. ef. 5-21-08

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Oregon State Lottery
Chapter 177

Rule Caption: Amends rules to correct cross references; General housekeeping changes for clarity.
Adm. Order No.: LOTT 2-2008
Filed with Sec. of State: 6-2-2008
Certified to be Effective: 6-2-08
Notice Publication Date: 4-1-2008
Rules Amended: 177-040-0003, 177-040-0051
Subject: The Oregon Lottery amended these two administrative rules to update cross references, amend a reference to percentage of sales, and to perform general housekeeping for clarity.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0003
Application for Temporary Lottery Retailer Contract

(1) **General**: For the purposes of this rule, temporary retailer contract means a contract issued to a retailer for a temporary period. A temporary contract may be formed subject to such special terms, conditions, or limitations as the Director may deem prudent.

(2)(a) **Submission**: To apply for a temporary retailer contract, an applicant must submit a complete application for a retailer contract.

(b) **Purchase of Existing Business**: When an applicant intends to apply for a temporary contract for a business which the applicant is purchasing from an existing Lottery retailer, the applicant may submit to the Lottery a complete application with a copy of the purchase agreement and other relevant sales documents prior to the date the applicant takes possession of the premises pursuant to the purchase agreement. Notwithstanding submission of the application prior to the date of possession, the Lottery shall not enter into a temporary contract with the applicant until on or after the date the applicant takes legal possession of the business.

(3) **Investigation**: When the Lottery accepts the complete application for a temporary retailer contract, the Director will conduct an abbreviated investigation of the applicant and the business. That investigation includes, but is not limited to:

(a) A computerized background check for criminal arrests and convictions;

(b) A credit check using the services of a commercial credit reporting company; and

(c) An inspection of the business for which the applicant seeks a temporary retailer contract.

(4) **Qualifying**: An applicant may qualify for a temporary retailer contract if, based on the abbreviated investigation and on the application, all of the following criteria are met:

(a) The applicant is applying for a retailer contract at a specific location;

(b) The "Criteria Precluding Entering Into a Contract" described in OAR 177-040-0005 do not apply to the applicant;

(c) The applicant has no criminal convictions of any kind within five years of the date application is made;

(d) The applicant has no convictions as described in OAR 177-040-0010(3), "Criminal Behavior";

(e) The applicant has no Class "A" misdemeanor or felony charges pending against the applicant;

(f) The applicant has no outstanding judgments, liens, or collections, except those judgments which the applicant is disputing through a legal process;

(g) The applicant is in compliance with all tax laws;

(h) The applicant has certified that the business location complies with OAR 177-040-0070, "Retailer Wheelchair Accessibility Program";

(i) The applicant has the appropriate Oregon Liquor Control Commission license, as required by ORS Chapter 461, if applying for a contract to offer Video Lottery℠ games; and

(j) There are no apparent factors regarding the applicant to cause the Director to reasonably conclude that the applicant poses an actual or apparent threat to the fairness, honesty, integrity, or security of the Lottery and its games. Factors that may pose a threat include, but are not limited to, any of the following examples:

(A) The applicant or key person has one or more criminal arrests or convictions, depending on the nature and severity of the crimes involved; or

(B) The applicant or key person has been involved in any civil action in which the final judgment indicates that the applicant or key person is not financially responsible, depending on the nature, severity, and recency of the action.

(5) **Other Requirements**: Prior to the effective date of the temporary retailer contract, the Director may require the applicant to:

(a) Receive training from the Lottery;

(b) Establish an electronic funds transfer (EFT) bank account for Lottery funds;

(c) Pay all necessary fees associated with the installation of telephone lines and telephone service;

(d) Agree to pay all necessary fees associated with amusement device taxes prior to the effective date of a temporary retailer contract; and

(e) Agree to be responsible for and to pay all fees in connection with the application, including any cancellation fees for telephone lines and service.

(6) **Other Video Lottery℠ Requirements**: The applicant and the applicant's business must qualify for the type of Lottery sales sought by the applicant. For example, if the applicant seeks a contract to offer Video Lottery℠ games, the business must have an appropriate liquor license and an age controlled area that meets the Lottery's requirements. In addition, the business must not be operating as a casino as described in OAR 177-040-0061.

(7) **Guarantor**: If the applicant is an entity other than either a sole proprietor who is a natural person or a private club as defined in ORS 471.175(8), at least one natural person who is a principal of the applicant entity and who is a key person may be required to personally guarantee all monies owed to the Lottery.

(8) **Bonding**: The Director may require the applicant to post a bond, letter of credit, or cash deposit in the form of certified funds prior to the effective date of a temporary retailer contract.

(9) **EFT Transfers**: If the Lottery enters into a temporary retailer contract with the applicant, the contract will require the applicant to pay the amount due the Lottery from the sale of Lottery tickets or shares by electronic funds transfer (EFT). In most instances, amounts due the Lottery will be collected via EFT at the end of the fourth day after the close of the Lottery business week. If an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites. The applicant must establish an account for deposit of money from the sale of Lottery tickets and shares with a financial institution that has the capability of making EFT draws.

(10) **Burden of Proof**: The burden for establishing that an applicant qualifies for a temporary retailer contract is on the applicant.

(11) **Termination**: In the Director's sole discretion, the Director may immediately terminate a temporary retailer contract if the Director determines that continuing to contract with the applicant is not in the best interest of the Lottery including, but not limited to, when:

(a) The applicant provided false or misleading material information, or the applicant made a material omission in the application for a retailer contract;

(b) The applicant or any key person is arrested or convicted of a Class "A" misdemeanor or felony during the term of the temporary retailer contract;

(c) An EFT payment is rejected for non-sufficient funds (NSF), or the applicant fails to provide timely information to the Lottery regarding any change of the applicant's EFT bank account;

(d) Any other reason contained in the contract or administrative rules that provides a basis for termination of a retailer contract; and

(e) When the Director concludes that continuing to contract with the applicant may pose a threat to the fairness, honesty, integrity, or security of the Lottery and its games.

(12) **Length of Temporary Contract**: A temporary retailer contract shall be valid for a specific time period for up to 120 days. A temporary retailer contract may, in the Director's discretion, be extended for up to 120 additional days.

Stat. Auth.: ORS 461.217, 461.250 & 461.300; Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.217, 461.250 & 461.300
Hist.: LOTT 5-2000, f. 7-26-00, cert. ef. 11-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 2-2008, f. & cert. ef. 6-2-08

177-040-0051
Designated Employees and Payment of Prizes

(1) **Designated Employees**: A traditional retailer must designate employees authorized to redeem winning Lottery tickets and shares. A Video LotterySM retailer must designate employees authorized to redeem Video LotterySM cash slips as defined in OAR 177-200-0005(1).

(2) **Traditional Lottery Retailers**: A traditional Lottery retailer must redeem winning Lottery tickets and shares during all of the retailer's designated hours of redemption.

(3) **Video Lottery^{SM} Retailers**: A Video Lottery^{SM} retailer must redeem Video Lottery^{SM} cash slips during all of the retailer's business hours of operations, except as follows:

(a) In the event of exceptional circumstances, a retailer may delay payment of a cash slip for a period of time not to exceed 24 hours from the time the player initially submits the cash slip to the retailer for payment. "**Exceptional circumstances**" means rare and unforeseen circumstances beyond the reasonable control of the retailer.

(b) Within 48 hours from the time the player initially submitted the cash slip to the retailer for payment, the retailer must submit to the Lottery a written report of the delay of payment and the exceptional circumstances that required the delay.

(c) The Director may review claims of exceptional circumstances and whether delayed payment was appropriate under the circumstances. Upon the Director's request, the retailer must provide the Director with evidence supporting a claim of exceptional circumstances. If a retailer fails to comply with a request or fails to adequately support a claim of exceptional circumstances, the Director shall find that the delay was not appropriate.

(d) If the Director finds that the delay was not appropriate, the retailer's delay of payment shall be considered a failure to perform contract duties or requirements, and the Lottery may take appropriate action including termination of the retailer contract. The Director's decision is final.

(4) **Payment**: Except as provided in sections (2) and (3) of this rule, a retailer must immediately pay prizes in cash or by check, or any combination thereof, when a player presents a winning Lottery ticket or share, including a Video Lottery^{SM} cash slip, for payment meeting the requirements of these rules. A retailer must not pay prizes in tokens, chips, or merchandise or charge a fee for paying a prize or for issuing payment.

(5) **Validation**: Notwithstanding sections (2) and (3) of this rule, once a Lottery retailer validates a winning ticket or share, including a Video Lottery^{SM} cash slip, the retailer must immediately pay it.

Stat. Auth.: ORS 461, 461.217, 461.250 & 461.300 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.217, 461.250 & 461.300
Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03; LOTT 2-2008, f. & cert. ef. 6-2-08

Oregon University System
Chapter 580

Rule Caption: Clarify applicability of particular provisions of the rules wholly consistent with the original intent.
Adm. Order No.: OSSHE 7-2008(Temp)
Filed with Sec. of State: 6-5-2008
Certified to be Effective: 6-5-08 thru 8-16-08
Notice Publication Date:
Rules Amended: 580-061-0145, 580-063-0010, 580-063-0020
Rules Suspended: 580-061-0145(T), 580-063-0010(T), 580-063-0020(T)
Subject: After extensive discussion and review by staff, campus representatives, and the Oregon Department of Justice, at the February 2008 meeting, the Board of Higher Education passed temporary rules significantly updating the OUS rule scheme for procurement, including new sections for contracting, the procurement of goods and professional services, and capitol construction. Subsequent to the implementation of the temporary rules, the Chancellor's Office and DOJ noticed several elements that required correction before the rules were to become permanent. These corrections clarify applicability of particular provisions of the rules wholly consistent with the original intent of the rule scheme as passed in February 2008.
Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-061-0145
Protest of Contractor Selection, Contract Award

(1) The purpose of this rule is to require adversely affected or aggrieved Bidders or Proposers on an Institution solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the Institution's selection or Award decision.

(2) Types of Protests. The following matters may be protested:

(a) A determination of responsibility or lack thereof;

(b) A determination of responsiveness or lack thereof;

(c) The rejection of a Bid or Proposal;

(d) The content of a Solicitation Document;

(e) The selection of one or more Contractors. A protest may be submitted only by an Entity that can demonstrate that it has been or is being adversely affected by an Institution decision or the content of a Solicitation Document.

(3) Delivery. Unless otherwise specified in the Solicitation Document, a Bidder or Proposer must deliver a Written protest to the Institution within seven (7) Days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Bid or Proposal and that it is a protest to ensure that it is recognized and recorded.

(4) Content of Protest. A Bidder's or Proposer's protest must fully specify the grounds for the protest and include all evidence that the protestor wishes the Vice Chancellor for Finance and Administration, Institution Vice President for Finance and Administration, or designee to consider. Failure to include any ground for the protest or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.

(5) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including, but not limited to, Specifications or Contract terms violates applicable law. The Institution will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to all Bidders and Proposers and extend the Closing where appropriate. The Institution may choose, in its sole discretion, to close the procurement process without making an Award and begin a new procurement process.

(6) A protest of the selection of one or more Contractors requires the protestor to demonstrate, as applicable;

(a) That all higher-ranked Bidders or Proposers were ineligible for selection or that the protestor would have been "next in line" to receive the Award and was eligible for selection; and

(b) That the Bidder or Proposer selected was ineligible;

(c) In the case of a sole source procurement, that the Single Seller selected is not the only Contractor or consultant reasonably available to provide the personal or professional services, goods, services, services performed by a Professional Consultant as defined in OAR 580-063-0010,

Construction-Related Services as defined in 580-063-0010, or combination of Professional Consultant services and Construction-Related Services.

(7) A protest of the rejection of a Bid or Proposal must demonstrate that the Institution's decision was materially in error or that the Institution committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) Response. The Vice Chancellor for Finance and Administration or the Institution Vice President for Finance and Administration, or their designee, will have the authority to settle or resolve a Written protest. A protest received after the time set out in the Solicitation Document will not be considered. The Vice Chancellor for Finance and Administration, or Vice President for Finance and Administration, or designee will issue a Written final agency order of the protest in a timely manner. If the protest is upheld, in whole or in part, the Institution may, in its sole discretion, either Award the Contract to the successful protestor or cancel the procurement or solicitation. Contract Award may be made prior to issuance of the final agency order if authorized by the Vice Chancellor for Finance and Administration, Vice President for Finance and Administration, or their designee.

(9) Judicial Review. Judicial review of the Institution's decision relating to a Contract Award protest will be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08

580-063-0010
Definitions

All capitalized terms in chapter 580, division 63, have the meanings set forth in OAR 580-061-0010 unless set forth below, or unless the context requires otherwise or except as stated.

(1) "Construction-Related Services" means one or more related services, which includes, but is not limited to: finance, design, preconstruction, and construction services. The project delivery methods that use Construction-Related Services include, but are not limited to: conventional construction services, design-build, construction manager at risk, agency construction management, and performance contracting.

(2) "Professional Consultant" means architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08

580-063-0020
Methods of Procurement

Institutions will use the following methods of procurement when procuring Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide Professional Consultant services, or Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(2) Informal Procurement. A competitive process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, institutional website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Contractor or Professional Consultant for a Contract or Public Improvement Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract or Public Improvement Contract with any qualified Entity Contractor or Professional Consultant for services included in the scope of the Emergency declaration. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) OUS Retainer Contract Program:

(a) The OUS Capital Construction and Planning Office will maintain Retainer Contracts for Professional Consultants, Construction-Related Services, and any other service that may from time to time benefit Institutions. The Retainer Contracts will be established in accordance with this subsection.

(A) Periodically, but no less often than every two years, the OUS Capital Construction and Planning Office will invite interested Contractors to submit business information that meets minimum qualifications as described in a Solicitation Document. Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as needed basis.

(B) Notice of the procurement will be published on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertisement.

(b) The OUS Capital Construction and Planning Office may enter into interagency agreements to permit other public agencies to utilize the services offered by Entities that have entered into Retainer Contracts if the public agency agrees to conditions, including but not limited to:

(A) Follow the procurement processes established in these rules.

(B) Use the contract templates associated with each retainer program.

(C) Any service procured will be the sole financial responsibility of the public agency.

(D) The public agency will be solely liable to resolve all disputes that may arise from breach of contract.

(E) The OUS Capital Construction, Planning, and Budget Office may impose a reasonable administrative fee on the public agency using the Retainer Contracts based on the compensation for services procured to recover administrative costs, legal review fees, and to improve or expand retainer programs.

(c) The OUS Capital Construction, Planning, and Budget Office will maintain an electronic roster of all Professional Consultants and Contractors who have entered into Retainer Contracts. Institutions that utilize retainer programs will follow the procedures established in these rules and will only execute contracts from templates that have been approved for each respective retainer program.

(6) Sole Source. A process where the Institution President, the Chancellor or designee has made a Written determination that due to special needs, experience, or qualifications, only a Single Seller is reasonably available to provide certain Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Authority. Institutions may authorize sole source procurements up to $1,000,000 cumulative for all Institution projects throughout a fiscal year. The Chancellor or designee may authorize sole source procurements up to $5,000,000 cumulative for each Institution's projects throughout a fiscal year. The Board will approve all other sole source procurements.

(b) Each Institution will provide public notice of its determination that the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services to be acquired from the Single Seller, identify the prospective Professional Consultant or Contractor, and include the date, time, and place that protests are due. The Institution shall give Entities at least seven (7)

Days from the date of notice publication to protest the sole source determination.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08

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Oregon University System, Oregon Institute of Technology Chapter 578

Rule Caption: Amends Special Institution Fees and Charges.
Adm. Order No.: OIT 1-2008
Filed with Sec. of State: 6-10-2008
Certified to be Effective: 6-10-08
Notice Publication Date: 5-1-2008
Rules Amended: 578-041-0030
Subject: 578-041-0030 Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for the fiscal year 2008–09. The schedule of subject fees may be obtained from the Oregon Institute of Technology office.
Rules Coordinator: Ceilia E. Foster—(541) 885-1105

578-041-0030
Special Institution Fees and Charges

The Schedule of Special Institution Fees and Charges establishes charges for selected courses and general services for Oregon Institute of Technology for the academic year 2007–08 and are hereby adopted by reference.

Copies of this fee schedule may be obtained from the Oregon Institute of Technology Finance and Administration Office.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070(2)
Hist.: OIT 1-1985, f. 1-10-85, ef. 2-1-85; OIT 1-1986, f. & ef. 9-4-86; OIT 4-1991, f. & cert. ef. 7-22-91; OIT 5-1992, f. & cert. ef. 9-24-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1995, f. & cert. ef. 7- 7-95; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 2-1996; f. & cert. ef. 12-19-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 1-2003, f. & cert. ef. 6-11-03; OIT 1-2004, f. & cert. ef. 6-9-04; OIT 1-2005, f. & cert. ef. 6-10-05; OIT 1-2006, f. & cert. ef. 6-2-06; OIT 1-2007, f. & cert. ef. 6-7-07; OIT 1-2008, f. & cert. ef. 6-10-08

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Rule Caption: Responsibility in Traffic Control.
Adm. Order No.: OIT 2-2008
Filed with Sec. of State: 6-10-2008
Certified to be Effective: 6-10-08
Notice Publication Date: 5-1-2008
Rules Amended: 578-072-0010
Subject: 578-072-0010 Amends the Responsibility in Traffic Control text. Amendments allow for text revisions, for fiscal year 2008–09. The schedule of text revisions may be obtained from the Oregon Institute of Technology, Finance and Administration office.
Rules Coordinator: Ceilia E. Foster—(541) 885-1105

578-072-0010
Responsibility in Traffic Control

(1) Oregon Revised Statute ORS 352.360 authorizes the State Board of Higher Education to "enact such regulations as it shall deem convenient or necessary to provide for the policing, control, and regulation of traffic and parking of vehicles on the property of any institution under the jurisdiction of the Board. Such regulations may provide for the registration of vehicles, the designation of parking areas, and the assessment and collection of reasonable fees and charges for parking."

(2) Strict enforcement for these regulations is necessary to minimize congestion and maintain safety of campus roads and in parking areas. The administration of these regulations lies within the Campus Traffic Commission working in coordination with Campus Safety.

(3) The regulations listed hereinafter, which provide for the policing, control, and regulating of traffic and parking of vehicles on campus, are enforceable whenever a vehicle is on campus. Parking or operation of a vehicle on campus is conclusive evidence of willingness to abide by these regulations.

(4) Administrative and disciplinary sanctions may be imposed upon students, faculty, and staff for violation of the regulations. Sanctions may include, but are not limited to, a reasonable monetary penalty which may be deducted from student general deposits, and faculty, staff or student salaries or other funds in the possession of the Institute as provided in ORS 352.360(2).

(5) For any emergency or special event, parking and traffic regulations may be waived by the Traffic Commission, Campus Safety Director, or Vice President for Finance and Administration.

(6) Oregon Institute of Technology assumes no responsibility or liability for the care or protection of any vehicle or its contents while it is parked on University property. OIT also assumes no responsibility or liability for the care or protection of any vehicle or its contents during its removal or subsequent storage as a result of violations of these regulations.

Stat. Auth.: ORS 351 & 352
Stats. Implemented: ORS 352.360
Hist.: OIT 2, f. & ef. 9-7-76; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 2-2002, f. & cert. ef. 10-24-02; OIT 2-2008, f. & cert. ef. 6-10-08

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Rule Caption: Amends Parking Permits and Fees with Text Changes.
Adm. Order No.: OIT 3-2008
Filed with Sec. of State: 6-10-2008
Certified to be Effective: 6-10-08
Notice Publication Date: 5-1-2008
Rules Amended: 578-072-0030
Subject: 578-041-0030 Amends the Parking Permits and Fees with text changes. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for fiscal year 2008–09. The schedule of subject fees may be obtained from the Oregon Institute of Technology Finance and Administration office.
Rules Coordinator: Ceilia E. Foster—(541) 885-1105

578-072-0030
Parking Permit and Fees

(1) Students, faculty and staff permits (adhesive or hanging) will be issued for a fee of $110.00 per year or $55.00 per term. Vehicles with these permits must park in the parking areas.

(2) Bicycles must be licensed by the City of Klamath Falls. A parking permit is not required.

(3) Special permits may be issued at the Cashier's office under the following circumstances:

(a) Application for a Disabled Parking permit must be submitted to the Student Health Service. After approval by Student Health Service, a Disabled Parking permit may be purchased at the Cashier's office.

(b) Persons displaying either permanent or temporary disabled permits are authorized open parking on the campus in addition to parking in the areas designated as disabled parking.

(c) Temporary permits are issued at no charge by Campus Safety at the Information Booth on Campus Drive. Vehicles displaying temporary permits must park in the area designated by that permit. Students, faculty, and staff members are able to obtain up to 10 days per term of temporary parking permits. Temporary permits are official documents and may not be modified or altered in any way.

(d) Visitor permits are issued at no charge at the Information Booth on Campus Drive and must be displayed as indicated on the permit. A visitor is any person who is an OIT guest but is not officially affiliated with OIT.

(e) Special guest permits: Guest permits will be issued by Campus Safety.

(4) Service Vendor permits are issued by Facilities or Campus Safety for contractors, media personnel, and vendors performing work on campus.

(5) Up to three vehicles registered on a single hanging permit-additional charge $10.00.

(6) Replacement Permits: A replacement permit may be purchased for a substitute vehicle when the original vehicle is sold, damaged beyond repair, or when the permit is lost or damaged. In the event a permit is stolen, a stolen permit report must be filed with Campus Safety before a replacement permit may be issued. An adhesive replacement permit may be obtained for a fee of $5.00 upon submission to the cashier of permit number evidence from the original permit. Replacement hanging permits are available at full price of the original hanging permit.

(7) Possession of a lost or stolen permit may be grounds for criminal charges, and/or University disciplinary action, including revocation of parking privileges.

(8) Parking permits are issued by the academic year or for a term. Refunds will be made only if a parking permit is removed from the vehicle and returned to the Cashier within ten (10) days of the purchase date. No other refunds will be given.

(9) Parking permits are considered University records, and as such, may not be falsified, misused, forged, modified or altered in any way. Vehicles bearing forged or altered permits are subject to a fine, criminal proceedings, and/or discipline by the University.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 1-1979, f. & ef. 6-8-79; OIT 6-1980, f. & ef. 6-9-80; OIT 3-1985, f. 8-5-85, ef. 9-1-85; OIT 1-1988(Temp), f. 6-20-88, cert. ef. 7-1-88; OIT 3-1991, f. & cert. ef. 7-8-91; OIT 2-1992, f. & cert. ef. 7-21-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1994, f. & cert. ef. 8-25-94; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 2-2005, f. & cert. ef. 6-10-05; OIT 2-2006, f. & cert. ef. 6-2-06; OIT 2-2007, f. & cert. ef. 6-7-07; OIT 3-2008, f. & cert. ef. 6-10-08

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Rule Caption: Amends Parking on Campus Text Changes.
Adm. Order No.: OIT 4-2008
Filed with Sec. of State: 6-10-2008
Certified to be Effective: 6-10-08
Notice Publication Date: 5-1-2008
Rules Amended: 578-072-0050
Subject: 578-072-0050 Amends the parking on Campus text. Amendments allows for text changes for fiscal year 2008–09. The schedule of text revisions may be obtained from the Oregon Institute of Technology Finance and Administration office,
Rules Coordinator: Ceilia E. Foster—(541) 885-1105

578-072-0050
Parking on Campus

(1) Any operator of a motor vehicle or bicycle, while parking on campus, must comply with the traffic laws and ordinances of the State of Oregon, the City of Klamath Falls, and the regulations governing motor vehicles and bicycles on campus. A "parked vehicle" refers to any vehicle which is stopped with or without a driver in attendance.

(2) Areas designated for parking are indicated on the campus traffic map.

(3) Zones designated as special service are restricted to loading/unloading and for maintenance services.

(4) Vehicles shall be parked on campus only in areas designated for parking. Parking of vehicles on any road, driveway, fire lane, entranceway to building, pedestrian lane, and landscaped area is prohibited. Encroachment upon adjacent spaces and parking aisles is prohibited, i.e., all vehicles must be parked between parking space markers.

(5) Parking with the front wheels adjacent to the curb (head in only) is required where angle or right-angle parking spaces are provided. Parallel parking is required where paralleled spaces are provided and is permissible in service zones for purposes of loading and unloading.

(6) When need has been established, a reserved parking space may be authorized by the Traffic Commission within a parking area; no other vehicle may be parked in this space.

(7) Bicycles must be parked in a bike rack. Parking of a bicycle in any building is prohibited.

(8) Open parking is permissible in designated faculty, staff, student, and visitor lots between 6 p.m. and 6 a.m., and on weekends and school holidays except for parking in reserved spaces, service areas, fire lanes, and limited parking zones.

(9) Repair of vehicles in any parking area or zone is prohibited.

(10) Visitors may park in any area designated for parking.

Stat. Auth.: ORS 351 & 352
Stats. Implemented: ORS 352.360
Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 1-1979, f. & ef. 6-8-79; OIT 6-1980, f. & ef. 6-9-80; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 4-2007, f. & cert. ef. 6-7-07; OIT 4-2008, f. & cert. ef. 6-10-08

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Rule Caption: Penalties for Offenses Fees.
Adm. Order No.: OIT 5-2008
Filed with Sec. of State: 6-10-2008
Certified to be Effective: 6-10-08
Notice Publication Date: 5-1-2008
Rules Amended: 578-072-0070
Subject: 578-072-0070 Amends the Responsibility in Traffic Control text. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for fiscal year 2008–09. The schedule of subject fees may be obtained from the Oregon Institute of Technology Finance and Administration office.
Rules Coordinator: Ceilia E. Foster—(541) 885-1105

578-072-0070
Penalties for Offenses

(1) Vehicle not registered — $20.

(2) Permit not properly displayed — $20.

(3) Falsification of information — $140.

(4) Parking offenses — $20

(5) Driving a motor vehicle or bicycle in non-designated areas — $25, plus the cost of all repairs.

(6) Bicycles parked in illegal areas — $20.

(7) Parking in designated disabled space — $190/$450 (by authority of ORS 811.625(5)).

(8) Using a hanging permit in an unregistered vehicle — $55.

(9) Moving violations, including such offenses as reckless driving, driving while intoxicated, speeding, driving the wrong way, running stop signs, excessive noise, and other offenses not otherwise specified herein, are a violation of the State of Oregon motor vehicle laws and punishable upon conviction, in accordance with Oregon State law, or may be referred to the City of Klamath Falls for arrest and/or prosecution. Campus violators will be fined $30. Violations referred to the City of Klamath Falls revert to city bails and fines.

(10) Habitual offenders are fined $55 in addition to the regular fine for the offense for which they are found guilty. Habitual offenders are individuals who have been found guilty of three or more offenses in an academic year. The $55 fine, in addition to the offense fine is imposed for the third conviction and each conviction thereafter during an academic year.

(11) FAILURE TO ANSWER A CITATION AS DIRECTED OR RESPOND TO A LETTER from the Traffic Appeals Board within the time specified thereon may be punishable by a fine of $15. An additional $15 fine is levied for failure to respond to a second letter within the time specified.

(12) Excessive citations may result in revocation of a parking permit by the Traffic Commission. A student violator may be referred to the Vice President for Student Affairs. A faculty or staff member may be referred to the Vice President for Finance and Administration.

(13) Payment of fines will be required prior to appeal of citation before the Traffic Appeals Board.

(14) Any student who fails to pay the Cashier's Office for a traffic citation, after written notice, will have the fine added to their account balance, or deducted from their payroll check.

(15) Any faculty or staff member who fails to pay the Cashier's Office for a traffic citation, after written notice, may have the fine deducted from their payroll check.

(16) A vehicle may be towed off campus and impounded and the owner subjected to towing and storage fees in addition to penalties, under the following circumstances.

(a) Any vehicle causing imminent danger to people or college property;

(b) A vehicle having a parking permit and receiving five (5) or more citations within the school year;

(c) A vehicle not having a parking permit and receiving three (3) citations within the school year;

(d) A vehicle left parked or standing in an area not normally used for vehicular traffic including parking on sidewalks or grass;

(e) Vehicles considered abandoned for at least seven (7) days.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070
Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 3-1985, f. 8-5-85, ef. 9-1-85; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 1-1994, f. & cert. ef. 8-25-94; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-2002, f. & cert. ef. 10-24-02; OIT 6-2007, f. & cert. ef. 6-7-07; OIT 5-2008, f. & cert. 6-10-08

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Oregon University System, Portland State University
Chapter 577

Rule Caption: Amends Portland State University's Schedule of Fines and Fees for General Services and other charges.

Adm. Order No.: PSU 5-2008(Temp)
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 7-1-08 thru 12-26-08
Notice Publication Date:
Rules Amended: 577-060-0020
Subject: This amendment establishes updated fees, charges, fines and deposits for General Services for the 2008–2009 Fiscal year. It is in the best interest of the general public for the State of Oregon that certain University services are self-sustaining. The amendment to this rule will permit the University to recover in fees the cost of providing various administrative and academic services.
Rules Coordinator: Tanja Dill—(503) 725-3701

577-060-0020
Schedule of Fees for General Services and Other Charges

The Schedule of Fines and Fees for General Services and Other Charges for the 2008-2009 Fiscal Year are hereby adopted by reference by Portland State University.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 352.260
Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987 (Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert.ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & cert. ef. 8-20-04; PSU 1-2005(Temp), f. & cert. ef. 7-15-05 thru 12-28-05; PSU 3-2005, f. & cert. ef. 12-13-05; PSU 2-2006, f. & cert. ef. 6-30-06; PSU 5-2006(Temp), f. & cert. ef. 8-30-06 thru 1-31-07; Administrative correction, 2-16-07; PSU 3-2007, f. & cert. ef. 7-5-07; PSU 5-2008(Temp), f. 6-13-08, cert. ef. 7-1-08 thru 12-26-08

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Oregon University System, Southern Oregon University
Chapter 573

Rule Caption: Parking Enforcement and Appeals.
Adm. Order No.: SOU 5-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-5-08
Notice Publication Date: 5-1-2008
Rules Amended: 573-050-0045
Subject: This amendment in Div. 050 increases permit fees only including all types of permits and fees.
Rules Coordinator: Treasa Sprague—(541) 552-6319

573-050-0045
Enforcement and Appeals

(1) Campus regulations are in effect 24 hours a day, seven days a week, except when parking permits are not required (as stated in OAR 573-050-0030).

(2) Tow-away zones will be enforced 24 hours a day, seven days a week.

(3) All penalties prescribed in OAR 573-050-0040 will be administratively enforced by Southern Oregon University. Violators will receive a parking citation of offense, together with the scheduled fine for said violation, in accordance with the penalties set forth in OAR 573-050-0040.

(4) After receipt of a parking citation, the individual must, within seven calendar days of the date of the citation, file a request for a hearing before the TAB or pay the appropriate fine.

(5) Any University personnel or students issuing a Guest permit may contact Parking Services (at the Enrollment Services Center in Britt Hall) to transfer responsibility for citations received by their guests to themselves. This in no way implies the fine will be suspended, only that the guest will not be billed or pursued to pay the fine. The University personnel or students will be responsible and have all avenues of appeal available as if the citation were issued to them personally.

(6) Any person wishing to take a case before the TAB must prepare a Petition for Appeal of Traffic Violation for a hearing indicating why the citation should be adjudicated. The petition form, available from Parking Services, must be completed and returned to the office within seven calendar days of the citation date.

(7) A person appealing the citation may appear before the TAB to present his/her case. If the appellant does not wish to appear in person, for reasons he/she may specify, the written appeal will be reviewed by the TAB, which shall render judgment. The appellant shall be notified by mail or email of the decision of the TAB.

(8) The party appealing the citation may have legal counsel to present his/her case to the TAB.

(9) In adjudicating appeals, the TAB shall have full authority to do the following:

(a) Dismiss the violations;

(b) Find the individual not guilty of the charges of the citation;

(c) Find the individual guilty of the violation and either imposes the fine stipulated in these rules or impose a lesser fine;

(d) Enter a finding of guilty without imposing any fine; issue a reprimand or warning; or impose a fine.

(10) The decision of the TAB may be appealed in writing to the Transportation Planning and Parking Committee (TPPC) by obtaining, completing, and filing a second appeal form with Parking Services within ten calendar days following the decision of the TAB. Parking Services will also have an opportunity to submit a written statement concerning the issuance of the citation.

(11) Once the TAB makes the decision on an appeal for a parking citation, the appellant will have ten calendar days from the decision date to appeal the TAB's decision further via the TPPC. After a decision has been made on the second appeal, the appellant has ten calendar days to pay any amount owed before it is charged to his/her account.

(12) The student's right to register for classes may be denied if any fines owing under these regulations remain unpaid.

(13) A student who fails to pay the University for any outstanding fine will have the fine charged to his/her account. Non-students who fail to pay any outstanding fines may be subjected to University collection policies and practices of up to and including assignment to an outside collection agency.

(14) Students leaving or graduating from the University will continue to be responsible for parking fines owed to the University, as long as such fines can be identified as belonging to the student(s) responsible.

(15) A faculty or staff member who fails to pay the University for any outstanding parking fines may have the fine deducted from his/her payroll check 30 days after written notice of the outstanding fines.

(16) Vehicles having outstanding parking fines may be denied issuance of a replacement or new parking decal.

(17) Fee Schedule:

(a) Carpool, sold for entire school year only: $65 each pool.

(b) Faculty and staff decal for first-registered vehicle:

(A) Fall term through summer term: $99

(B) Winter term through summer term: $80

(C) Spring term through summer term: $65

(D) Term decals: $53

(c) Faculty/staff hangtags are issued for a three-year period: $297

(A) This fee is for a one-time purchase.

(B) Payroll deduction is available, plus applicable increases in permit fees.

(d) Student Commuter and Residence Hall decal for first-registered vehicle:

(A) Fall term through summer term: $93

(B) Winter term through summer term: $75

(C) Spring term through summer term: $60

(D) Term decals: $45

(e) Motorcycles, mopeds, and scooters, one vehicle only:

(A) Fall term through summer term: $38

(B) Winter term through summer term: $35

(C) Spring term through summer term: $32

(D) Term decals: $30

(f) Second Vehicle permit: $20

(A) Second permits will be sold only to Faculty/Staff and Commuter permit holders. Red permit holders may not purchase a second permit.

(B) One second permit is allowed for each full-price (first-registered vehicle) permit purchased.

(C) Replacement permits can be obtained only in accordance with OAR 573-050-0025, (8).

(g) Replacement permits or hangtags: $20

(h) Lost/stolen permits: $20

(i) Departmental Reserved Parking spaces (nonrefundable): $100 over and above price for regular parking permit and a $50 fee for each subsequent sign-change after a sign is posted.

(j) Commercial permit, each vehicle:

(A) Long-term, twelve months: $130

(B) Long-term, six months: $77

(C) Short-term, one month: $20

(D) Short-term, daily: $7

(k) Weekly parking permits (for red and green lots only): $20 per week (available at Housing, and Parking Services).

(l) Daily parking permits (for red and green lots only): $7 per day (available at Housing, and Parking Services).

(m) Evening and weekend parking in designated lots: $1

(n) Visitor pay parking in specified lots: $1 per hour (lot 12, and lot 29; in lot 1, pay $0.25 per hour).

(o) Volunteer permit:

(A) Volunteer, each vehicle, long-term, one year: $6

(B) Volunteer, each vehicle, short-term, less than one month: $1

(p) Handling charges:

(A) Deducting fines from payroll check: $5

(B) Out-of-state Department of Motor Vehicles research fee: $5

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 3-1981, f. & ef. 9-9-81; SOSC 4-1982, f. & ef. 7-28-82; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1996, f. & cert. ef. 8-2-96; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05; SOU 3-2006, f. & cert. ef. 6-29-06; SOU 3-2007, f. & cert. ef. 7-23-07; SOU 5-2008, f. 6-4-08, cert. ef. 6-5-08

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Oregon Utility Notification Center
Chapter 952

Rule Caption: In the Matter of a Rulemaking to Clarify OAR 952-001-0070.

Adm. Order No.: OUNC 1-2008

Filed with Sec. of State: 5-30-2008

Certified to be Effective: 5-30-08

Notice Publication Date: 5-1-2008

Rules Amended: 952-001-0070

Subject: This rule amendment to OAR 952-001-0070 clarifies the wording of paragraph (1)(c) regarding acceptable notifications. The amendment clarifies that if an Automatic Voice Response is used, it must have a repeat option and a call back number so that the information can be heard again.

Rules Coordinator: Diane Davis—(503) 378-4372

952-001-0070

Operators to Mark Underground Facilities or Notify Excavator that None Exist

(1) Except as provided in section (3) of the rule, within two business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent shall:

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks shall indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than two (2) inches;

(b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator; or

(c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. Acceptable notifications must include locate request call back information and if done using an AVR (Automatic Voice Response) must have a repeat option and call back number to hear the information again.

(2) Operators of abandoned facilities shall mark said facilities to the standards of locatable facilities or unlocatable facilities.

(3) An operator shall mark any abandoned underground facility that is known to it with a capital letter "A" inside of a circle, using the appropriate operator color and identification.

(4) An operator of any out-of-service underground facility shall mark such facility in the same way it marks an underground facility that is in service.

(5) If an excavator uses offset marking, the excavator shall correctly measure the amount of offset, so that the excavator can reestablish the location of underground facilities where originally marked.

(6) If the excavator notifies the operator of underground facilities discovered during an excavation in response to an emergency, the operator of underground facilities shall comply with section (1) of this rule as soon as possible.

(7) Underground facilities shall be marked in accordance with the following designated color code:

(a) RED — Electric power lines, cables or conduit, and lighting cables.

(b) YELLOW — Gas, oil, steam, petroleum, or other hazardous liquid or gaseous materials.

(c) ORANGE — Communications, cable TV, alarm or signal lines, cables or conduits.

(d) BLUE — Water, irrigation, and slurry lines.

(e) GREEN — Sewers, drainage facilities or other drain lines.

(f) WHITE -- Pre-marking of the outer limits of the proposed excavation or marking the centerline and width of proposed lineal installations of buried facilities.

(g) PINK — Temporary Survey Markings.

(h) PURPLE — Slurry and reclaimed.

(8) In areas of ongoing excavation or construction operators shall mark newly installed underground facilities immediately upon placement.

(9) Except while making minor repairs to existing non-conductive, unlocatable facilities, an operator burying non-conductive, unlocatable facilities within the public rights-of-way or utility easements shall place a tracer wire or other similar conductive marking tape or device with the facility to allow for later location and marking.

(10) An operator of underground drainage lines is not required to indicate the presence of those facilities if the existence and route of those facilities can be determined from the presence of other visible facilities, such as manholes, catch basins, inlets, outlets, junction boxes, storm drains or permanent marking devices.

Stat. Auth.: ORS 183 & 757

Stats. Implemented: ORS 757.552

Hist.: OUNC 1-1997, f. & cert. ef. 4-17-97; Administrative Reformatting 1-19-98; OUNC 1-2000, f. & cert. ef. 8-28-00; OUNC 1-2006, f. & cert. ef. 10-13-06; OUNC 1-2008, f. & cert. ef. 5-30-08

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Oregon Watershed Enhancement Board
Chapter 695

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

Adm. Order No.: OWEB 2-2008(Temp)

Filed with Sec. of State: 5-27-2008

Certified to be Effective: 5-27-08 thru 11-18-08

Notice Publication Date:

Rules Amended: 695-007-0010, 695-007-0020, 695-007-0030, 695-007-0040

Subject: The amended rules in Division 7 of OAR 695 allow the Oregon Watershed Enhancement Board to apply preferences for restoration, inventory and data collection, and project development grants that support priority salmon habitat enhancements and that are able to create work opportunities for fishers displaced by the 2008 limitation 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.

Rules Coordinator: Melissa Leoni—(503) 986-0179

695-007-0010

Purpose

(1) The following administrative rules apply to the state of emergency established by Executive Order No. 08-10, dated April 10, 2008, relating to limitations on ocean commercial and sport salmon fishing.

(2) These rules provide for action available to the Board and Director. These rules are operative until the Governor declares that the state of emergency established by Executive Order No. 08-10 is concluded. Action within these rules is intended to mitigate the economic and social impacts facing coastal communities during restricted commercial and sport salmon

fishing seasons and to advance and accelerate salmon habitat restoration and recovery efforts.

Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351–541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07; OWEB 2-2008(Temp), f. & cert. ef. 5-27-08 thru 11-18-08

695-007-0020
Definitions

(1) "Board" means Oregon Watershed Enhancement Board.

(2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board.

(3) "Displaced Worker" or "displaced fisher" means an individual who meets the criteria adopted by the Oregon Salmon Commission to be considered displaced with respect to commercial fishing employment, or with respect to sport fishing employment, as identified as displaced by the Director in consultation with the ocean salmon charter industry to be made available on the OWEB web site prior to offering funding to grant applicants.

Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351–541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07; OWEB 2-2008(Temp), f. & cert. ef. 5-27-08 thru 11-18-08

695-007-0030
OWEB Actions

During the pendency of Executive Order No. 08-10 declaring a salmon season state of emergency, the Board may:

(1) Provide grant funding to support salmon habitat enhancement and related projects within salmon-bearing watersheds in Oregon, for the purpose of accelerating the rebuilding of salmon populations and creating employment opportunities for displaced workers, including projects that:

(a) Support salmon habitat enhancement;

(b) Gather information that can be directly used for salmon habitat restoration;

(c) Conduct outreach to the public concerning salmon habitat restoration; or

(d) Support research that assists in the evaluation of salmon stocks at sea.

(2) Provide grant funding to develop projects that would enhance salmon habitat in the future.

Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351–541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07; OWEB 2-2008(Temp), f. & cert. ef. 5-27-08 thru 11-18-08

695-007-0040
Application Criteria

(1) For grant applicants to receive funding, the following award preferences are applicable, in addition to the evaluation criteria set forth in any other applicable rule. Projects must employ displaced fishers in all project labor opportunities to the greatest extent possible over a period of several months, and also must:

(a) Provide benefit to high priority salmon habitat along the Oregon coast;

(b) Directly address limiting factors for the recovery of salmon in watersheds that drain directly to the ocean, including the Umpqua and Rogue basins;

(c) Be identified in an existing watershed-scale assessment and action plan; or

(d) Address a specific limiting factor identified in the **2003-2005 Oregon Plan Biennial Report**, **Volume 2** published by the Oregon Watershed Enhancement Board in 2005.

(2) In addition to the preference criteria described in section 1, the following award preferences are applicable to specific types of grant applications:

(a) For Inventory and Data Collection grants, preference will be given to projects that focus on surveys and inventories that document conditions affecting aquatic resources or ground-truth mapping of high priority salmon habitat.

(b) For Restoration grants, preference will be given to projects that focus on restoration in high priority salmon habitat, or have received from OWEB a relevant technical assistance award in an earlier grant cycle.

(c) For Project Development grants, preference will be given to projects that have a high likelihood of being implemented within one year following completion of the project development grant, focus on high priority salmon habitat, or address a specific limiting factor identified in the **2003-2005 Oregon Plan Biennial Report**, **Volume 2** published by the Oregon Watershed Enhancement Board in 2005.

(3) The preferences identified in section 1 of this rule may also be applied to other OWEB grants, including Restoration Projects described in Division 10, Education and Outreach Grants described in Division 15, Monitoring Grants described in Division 25, and Assessment and Action Plan Grants described in Division 30, in addition to the evaluation criteria set forth in rules contained in those divisions.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351–541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07; OWEB 2-2008(Temp), f. & cert. ef. 5-27-08 thru 11-18-08

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Oregon Youth Authority
Chapter 416

Rule Caption: Model Rules of Procedure.
Adm. Order No.: OYA 1-2008
Filed with Sec. of State: 6-9-2008
Certified to be Effective: 6-9-08
Notice Publication Date:
Rules Amended: 416-001-0005
Subject: Adoption of the latest Attorney General's version of the Model Rules of Procedure.
Rules Coordinator: Winifred Skinner—(503) 373-7570

416-001-0005
Model Rules of Procedure

Under the provisions of ORS 183.341, the OYA adopts the January 1, 2008, Attorney General's Uniform and Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure are available from the office of the Attorney General or the Oregon Youth Authority.]
Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 183.335 & 183.341
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2000, f. & cert. ef. 8-2-00; OYA 2-2003, f. & cert. ef. 8-20-03; OYA 7-2004, f. & cert. ef. 7-8-04; OYA 1-2008, f. & cert. ef. 6-9-08

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of Additions, Deletions and Revisions to OAR 860, Division 036.
Adm. Order No.: PUC 2-2008
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 5-30-08
Notice Publication Date: 3-1-2008
Rules Amended: 860-036-0030
Subject: The Commission adopted revisions to only one rule in Division 036 and not to the remaining rules in Division 036 (Commission Order No. 08-289). The Commission revised OAR 860-036-0030, Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers. Under ORS 757.061(6), the customers of a water utility that is exempt from regulation have the opportunity to petition the Commission to regulate the water utility if its rates exceed certain regulatory thresholds. This rule amendment updates those regulatory threshold amounts.

As directed by the Commission, Commission Staff will continue to work on revising the rules in Division 036; and a new rulemaking notice will be published when those revisions are complete.
Rules Coordinator: Diane Davis—(503) 378-4372

860-036-0030
Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers

As required by ORS 757.061(7), the Commission adopts the following maximum rates and charges for water utilities that are not rate regulated and are serving fewer than 500 customers:

(1) $33 annual average monthly residential rate;

(2) $33 annual average monthly service rate for small commercial customers with a meter or pipe diameter one inch or less;

(3) $110 annual average monthly service rate for large commercial customers with a meter or pipe diameter larger than one inch; and

(4) Any service connection charge, system impact fee, facilities charge, main line extension, or other similar charge must be cost based.

Upon the Commission's request, a water utility must be able to demonstrate compliance with this requirement.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 757.061
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 7-2004, f. & cert. ef 4-9-04; PUC 2-2008, f. & cert. ef. 5-30-08

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Real Estate Agency
Chapter 863

Rule Caption: Real estate advertising.
Adm. Order No.: REA 2-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Amended: 863-015-0125
Rules Repealed: 863-015-0125(T)
Subject: The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising related to professional real estate activity. If advertising includes the licensee's name, the licensee's licensed name must be used or a common derivative of the licensee's first name may be used. A real estate broker must submit all advertising to the principal real estate broker for review and approval prior to releasing advertising to the public. A principal real estate broker is responsible for advertising that states the principal real estate broker's licensed name of register business. Advertising in electronic media has specific requirements. Advertising using the term "team" or "group" has specific requirements.

Replaces temporary rule in effect January 18, 2008 through July 16, 2008.
Rules Coordinator: Laurie Skillman—(503) 378-4630

863-015-0125
Advertising

(1) As used in this rule, "advertising" and "advertisement" include all forms of representation, promotion and solicitation disseminated in any manner and by any means for any purpose related to professional real estate activity, including, without limitation, advertising by mail; telephone, cellular telephone, and telephonic advertising; the Internet, E-mail, electronic bulletin board and other similar electronic systems; and business cards, signs, lawn signs, and billboards.

(2) Advertising by a licensee, in process and in substance, must:

(a) Be identifiable as advertising of a real estate licensee;

(b) Be truthful and not deceptive or misleading;

(c) Not state or imply that the real estate broker or property manager associated with a principal real estate broker is the person responsible for operating the real estate brokerage or is a sole practitioner or principal broker;

(d) Not state or imply that the licensee is qualified or has a level of expertise other than as currently maintained by the licensee; and

(e) Be done only with the written permission of the property owner(s) or owner(s') authorized agent.

(3) Advertising that includes the licensee's name must:

(a) Use the licensee's licensed name; or

(b) Use a common derivative of the licensee's first name and the licensee's licensed last name.

(4) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising.

(5) Except as provided in section (8) of this rule, a real estate broker must:

(a) Submit proposed advertising to the licensee's principal broker for review and receive the principal broker's approval before publicly releasing any advertisement; and

(b) Keep a record of the principal broker's approval and make it available to the agency upon request.

(6) Except as provided in section (8) of this rule, a principal real estate broker:

(a) Is responsible for all advertising approved by the principal broker that states the principal real estate broker's licensed name or registered business name; and

(b) Must review all advertising of a real estate broker or a property manager who is associated with the principal real estate broker.

(7) A principal real estate broker may delegate direct supervisory authority and responsibility for advertising originating in a branch office to the principal broker who manages the branch office if such delegation is in writing.

(8) A licensee associated with a principal real estate broker may advertise property owned by the licensee for sale, exchange, or lease option without approval of the principal real estate broker, if:

(a) The property is not listed for sale, exchange, or lease option with the principal broker;

(b) The advertising states that the property owner is a real estate licensee; and

(c) The advertising complies with all applicable other applicable provisions of ORS chapter 696 and its implementing rules.

(9) Advertising in electronic media and by electronic communication, including but not limited to the Internet, web pages, E-mail, E-mail discussion groups, blogs, and bulletin boards is subject to the following requirements:

(a) Advertising must comply with all other requirements of this rule;

(b) Advertising by a licensee must include on its first page:

(A) The licensee's licensed name as required in section (3) of this rule;

(B) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager; and

(C) A statement that the licensee is licensed in the State of Oregon.

(c) Sponsored links, which are paid advertisements located on a search engine results page, are exempt from the requirements contained in subsection (b) of this section if the first page following the link complies with subsection (b).

(d) E-mail from a licensee is exempt from the requirements of subsection (b) of this section if the licensee's initial communication contained the information required by subsection (a).

(10) No advertising may guarantee future profits from any real estate activity.

(11) A licensee may use the term "team" or "group" to advertise if:

(a) The use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person is lawfully doing business;

(b) The team or group includes at least one real estate licensee;

(c) The licensee members of the team or group are associated with the same principal broker or property manager;

(d) The licensee members of the team or group use each licensee's licensed name as required under section (3) of this rule;

(e) If any non-licensed individuals are named in the advertising, the advertising must clearly state which individuals are real estate licensees and which ones are not; and

(f) The advertising complies with all other applicable provisions of ORS chapter 696 and its implementing rules.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.301(1), (4)
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 3-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; REA 3-2007, f. & cert. ef. 6-29-07; REA 1-2008(Temp), f. & cert. ef. 1-18-08 thru 7-16-08; REA 2-2008, f. 6-12-08, cert. ef. 7-1-08

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Rule Caption: License applicant criminal background check rules.
Adm. Order No.: REA 3-2008
Filed with Sec. of State: 6-12-2008
Certified to be Effective: 7-1-08
Notice Publication Date: 5-1-2008
Rules Adopted: 863-005-0000, 863-005-0005, 863-005-0010, 863-005-0020, 863-005-0030, 863-005-0040, 863-005-0050, 863-005-0060, 863-005-0070, 863-005-0080, 863-005-0090
Subject: New rules implement House Bill 2157 (2005) requiring a criminal record check and criminal background fitness determination for license applicants.
Rules Coordinator: Laurie Skillman—(503) 378-4630

863-005-0000
Purpose

These rules control the agency's acquisition of information about a subject individual's criminal history through criminal records checks or

other means and its use of that information to determine whether the subject individual is trustworthy and competent to hold a real estate license or registration. The criminal background check is only one portion of the approval process required to obtain a license or registration.

Stat. Auth.: ORS 181.534, 696.022, 696.301, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0005
Definitions

As used in OAR chapter 863, division 5 unless the context requires otherwise, the following definitions apply:

(1) "Agency" means the State of Oregon Real Estate Agency.

(2) "Authorized Designee" means a person authorized by the commissioner to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a criminal background fitness determination in accordance with these rules.

(3) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) "Criminal Background Clearance" means that, pursuant to a criminal background check, an authorized designee has determined that a subject individual is trustworthy and competent to be a licensee through a criminal background fitness determination.

(5) "Criminal Offender Information" includes:

(a) Records and related data concerning physical description and vital statistics;

(b) Fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders;

(c) Records of arrests; and

(d) The nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(6) "Crime Relevant to a Criminal Background Fitness Determination" means a crime listed or described in OAR 863-005-0030.

(7) "Criminal Records Check and Criminal Background Fitness Determination Rules" or "These Rules" means OAR chapter 863, division 5.

(8) "Criminal Records Check" means any of the following three processes undertaken by the agency to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the Department's rules;

(b) A check of Oregon criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police at the agency's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the agency's request (Nationwide Criminal Records Check).

(9) "Denied" means that, following a criminal background fitness determination under OAR 863-005-0020, an authorized designee has determined that a subject individual is not trustworthy and competent to hold a license or registration.

(10) "False Statement" means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the agency with false information about the subject individual's criminal history, including, but not limited to, false information about the individual's identity or conviction record; or

(b) Failed to provide the agency information material to determining the individual's criminal history.

(11) "Fingerprint Card" means a form prescribed by the Oregon Department of State Police and Federal Bureau of Investigation.

(12) "Criminal Background Fitness Determination" means a determination made by an authorized designee pursuant to the process established in OAR 863-005-0020 whether a subject individual is trustworthy and competent to be a licensee or registrant.

(13) "Licensee" means a principal real estate broker, a real estate broker, a real estate property manager as defined in ORS 696.010, or a real estate marketing organization licensed under ORS 696.606. Licensee shall also mean an escrow agent as defined in ORS 696.505(5).

(14) "Other Criminal Records Information" means any information, in addition to criminal offender information, sought or obtained by the agency about a subject individual and used by the agency to determine the individual's criminal history.

(15) "Registrant" means a person registered as a membership camping contract broker or salesperson as provided in ORS 94.980.

(16) "Subject Individual" means an applicant for a license or renewal of a license under ORS 696.020, a real estate marketing organization license under ORS 696.606, an escrow agent license or renewal under ORS 696.511, a membership camping contract broker or salesperson registrant under ORS 94.980 as someone from whom the agency may require fingerprints in order for the agency to conduct a criminal records check.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0010
Criminal Records Check Process

(1) A subject individual shall complete and sign an agency background check application and an applicant fingerprint card approved by the agency.

(2) Within a reasonable period of time, a subject individual shall provide additional information as requested by the agency to resolve any issue hindering the completion of a criminal records check.

(3) An authorized designee shall request that the Oregon Department of State Police conduct a criminal records check for all new licensee and registrant applications.

(4) An authorized designee may request that the Oregon Department of State Police conduct a criminal background records check for licensee and registrant renewal applications when there is reason to believe that:

(a) A subject individual committed a crime listed in OAR 863-005-0030; or

(b) A factor relevant to a criminal background fitness determination listed in OAR 863-005-0020 was not previously identified.

(5) When an authorized designee requires a criminal record check to be performed under section(3) or (4) of this rule, an authorized designee shall request that the Oregon Department of State Police conduct Oregon and nationwide criminal records checks through fingerprint identification. The authorized designee may also perform a Law Enforcement Data System (LEDS) criminal records check as part of any criminal background fitness determination conducted in regard to a subject individual.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0020
Criminal Background Fitness Determination

(1) An authorized designee shall make a criminal background fitness determination about a subject individual based on:

(a) Background check application and fingerprint card;

(b) Any criminal records check(s) conducted; and

(c) Any false statements made by the subject individual.

(2) In addition to the information in section (1) of this rule, an authorized designee may obtain any other criminal records information about the subject individual from any source, including law enforcement agencies or courts within or outside of Oregon.

(3) A criminal background fitness determination shall be based on the factors described in section (5) of this rule in relation to information provided by the subject individual under OAR 863-005-0010.

(4) An authorized designee may request to meet with the subject individual to obtain additional criminal offender information necessary to complete a criminal background fitness determination.

(5) An authorized designee shall consider all collected information in determining:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 863-005-0030;

(b) The nature of any crime identified under subsection (a) of this section of the rule;

(c) The facts that support the conviction, a finding of guilty except for insanity, or that a pending indictment or uncompleted diversion exists;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) of this section of the rule or of a false statement made by the subject individual to the specific requirements of the subject individual's license or registration; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the license or registration for which the criminal background fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 863-005-0030;

(E) Whether a conviction identified under subsection (a) of this section of the rule has been set aside or pardoned, and the legal effect of setting aside the conviction or pardon;

(F) The disposition of a pending indictment identified under subsection (a) of this section of the rule;

(G) Whether the subject individual:

(i) Has been arrested for or charged with a crime listed under OAR 863-005-0030 within the last five years;

(ii) Is being investigated, or has an outstanding warrant, for a crime listed under OAR 863-005-0030;

(iii) Is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 863-005-0030;

(iv) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 863-005-0030;

(v) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 863-005-0030 if committed by an adult;

(vi) Has been incarcerated and length of incarceration; and

(vii) Has a history of drug or alcohol abuse which relates to the criminal activity and the history of treatment or rehabilitation for such abuse.

(6) Approval. An authorized designee shall approve a criminal background clearance application if the information described in sections (1) and (2) of this rule shows no credible evidence that the subject individual:

(a) Has been convicted of, has a pending indictment or has been found guilty except for insanity (or comparable disposition) of a crime listed in OAR 863-005-0030;

(b) Has an uncompleted diversion; or

(c) Has made a false or incomplete statement or omitted information; and

(d) No discrepancies exist between the criminal offender information, other criminal records information and information obtained from the subject individual.

(7) Denial. An authorized designee shall not approve a criminal background clearance application if a criminal background fitness determination based on the factors described in section (5) of this rule demonstrates that the subject person is not trustworthy and competent to hold a professional real estate license or registration in a manner that protects the public.

(8) A denial of a criminal background clearance shall become a final order of the agency unless the subject individual appeals the authorized designee's criminal background fitness determination by requesting a contested case hearing as provided by OAR 863-005-0070.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0030
Crimes Relevant to a Criminal Background Fitness Determination

(1) Permanent Review Crimes:

(a) ORS 162.015, Bribe giving;

(b) ORS 162.025, Bribe receiving;

(c) ORS 162.065, Perjury;

(d) ORS 162.085, Unsworn falsification;

(e) ORS 162.117, Public Investment Fraud

(f) ORS 162.155, Escape II;

(g) ORS 162.165, Escape I;

(h) ORS 162.235, Obstructing governmental or judicial administration;

(i) ORS 162,265, Bribing a witness;

(j) ORS 162.275, Bribe receiving by a witness;

(k) ORS 162.305, Tampering with public records;

(l) ORS 162.325, Hindering prosecution;

(m) ORS 162.355, Simulating legal process;

(n) ORS 162.367, Criminal impersonation of peace officer;

(o) ORS 162.405, Official misconduct II;

(p) ORS 162.415, Official misconduct I;

(q) ORS 162.425, Misuse of confidential information;

(r) ORS 163.005, Criminal homicide;

(s) ORS 163.095, Aggravated murder;

(t) ORS 163.115, Murder;

(u) ORS 163.118, Manslaughter I;

(v) ORS 163.125, Manslaughter II;

(w) ORS 163.145, Criminally negligent homicide;

(x) ORS 163.160, Assault IV;

(y) ORS 163.165, Assault III;

(z) ORS 163.175, Assault II;

(aa) ORS 163.185, Assault I;

(bb) ORS 163.187, Strangulation;

(cc) ORS 163.190, Menacing;

(dd) ORS 163.205, Criminal mistreatment I;

(ee) ORS 163.207, Female genital mutilation;

(ff) ORS 163.208, Assault of Public Safety Officer;

(gg) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;

(hh) ORS 163.225, Kidnapping II;

(ii) ORS 163.235, Kidnapping I;

(jj) ORS 163.257, Custodial interference I;

(kk) ORS 163.275, Coercion;

(ll) ORS 163.355, Rape III;

(mm) ORS 163.365, Rape II;

(nn) ORS 163.375, Rape I;

(oo) ORS 163.385, Sodomy III;

(pp) ORS 163.395, Sodomy II;

(qq) ORS 163.405, Sodomy I;

(rr) ORS 163.408, Unlawful Sexual penetration II;

(ss) ORS 163.411, Unlawful Sexual penetration I;

(tt) ORS 163.415, Sexual abuse III;

(uu) ORS 163.425, Sexual abuse II;

(vv) ORS 163.427, Sexual abuse I;

(ww) ORS 163.452, Custodial sexual misconduct I;

(xx) ORS 163.454, Custodial sexual misconduct II;

(yy) ORS 163.465, Public indecency;

(zz) ORS 163.476, Unlawfully being in a location where children regularly congregate;

(aaa) ORS 163.479, Unlawful contact with a child;

(bbb) ORS 163.525, Incest;

(ccc) ORS 163.535, Abandonment of a child;

(ddd) ORS 163.537, Buying or selling a person under 18 years of age;

(eee) ORS 163.547, Child neglect I;

(fff) ORS 163.555, Criminal nonsupport;

(ggg) ORS 163.575, Endangering the welfare of a minor;

(hhh) ORS 163.670, Using child in display of sexually explicit conduct;

(iii) ORS 163.684, Encouraging child sexual abuse I;

(jjj) ORS 163.686, Encouraging child sexual abuse II;

(kkk) ORS 163.687, Encouraging child sexual abuse III;

(lll) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child;

(mmm) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child;

(nnn) ORS 163.732, Stalking;

(ooo) ORS 163.750, Violating court's stalking order;

(ppp) ORS 164.045, Theft II;

(qqq) ORS 164.055, Theft I;

(rrr) ORS 164.057, Aggravated theft I;

(sss) ORS 164.075, Theft by extortion;

(ttt) ORS 164.085, Theft by deception;

(uuu) ORS 164.095, Theft by receiving;

(vvv) ORS 164.125, Theft of services;

(www) ORS 164.135, Unauthorized use of a vehicle;

(xxx) ORS 164.162, Mail theft or receipt of stolen mail;

(yyy) ORS 164.170, Laundering a monetary instrument;

(zzz) ORS 164.172, Engaging in a financial transaction in property derived from unlawful activity;

(aaaa) ORS 164.215, Burglary II;

(bbbb) ORS 164.225, Burglary I;

(cccc) ORS 164.235, Possession of burglar's tools or theft device;

(dddd) ORS 164.255, Criminal trespass I;

(eeee) ORS 164.265, Criminal trespass while in possession of firearm;
(ffff) ORS 164.315, Arson II;
(gggg) ORS 164.325, Arson I;
(hhhh) ORS 164.365, Criminal Mischief I;
(iiii) ORS 164.377, Computer crime;
(jjjj) ORS 164.395, Robbery III;
(kkkk) ORS 164.405, Robbery II;
(llll) ORS 164.415, Robbery I;
(mmmm) ORS 164.885, Endangering aircraft;
(nnnn) ORS 165.007, Forgery II;
(oooo) ORS 165.013, Forgery I;
(pppp) ORS 165.017, Criminal possession of a forged instrument II;
(qqqq) ORS 165.022, Criminal possession of a forged instrument I;
(rrrr) ORS 165.032, Criminal possession of a forgery device;
(ssss) ORS 165.042, Fraudulently obtaining a signature;
(tttt) ORS 165.055, Fraudulent use of a credit card;
(uuuu) ORS 165.065, Negotiating a bad check;
(vvvv) ORS 165.074, Unlawful factoring of payment card transaction;
(wwww) ORS 165.080, Falsifying business records;
(xxxx) ORS 165.095, Misapplication of entrusted property;
(yyyy) ORS 165.100, Issuing a false financial statement;
(zzzz) ORS 165.102, Obtaining execution of documents by deception;
(aaaaa) ORS 165.581, Cellular counterfeiting I;
(bbbbb) ORS 165.800, Identity theft;
(ccccc) ORS 165.810, Unlawful possession of a personal identification device;
(ddddd) ORS 165.813, Unlawful possession of fictitious identification;
(eeeee) ORS 166.005, Treason;
(fffff) ORS 166.015, Riot;
(ggggg) ORS 166.085, Abuse of corpse II;
(hhhhh) ORS 166.087, Abuse of corpse I;
(iiiii) ORS 166.155, Intimidation II;
(jjjjj) ORS 166.165, Intimidation I;
(kkkkk) ORS 166.220, Unlawful use of weapon;
(lllll) ORS 166.270, Possession of weapons by certain felons;
(mmmmm) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
(nnnnn) ORS 166.275, Possession of weapons by inmates of institutions;
(ooooo) ORS 166.385, Possession of hoax destructive device;
(ppppp) ORS 166.429, Firearms used in felony;
(qqqqq) ORS 166.720, Racketeering activity unlawful;
(rrrrr) ORS 167.012, Promoting prostitution;
(sssss) ORS 167.017, Compelling prostitution;
(ttttt) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
(uuuuu) ORS 167.065, Furnishing obscene materials to minors;
(vvvvv) ORS 167.070, Sending obscene materials to minors;
(wwwww) ORS 167.075, Exhibiting an obscene performance to a minor;
(xxxxx) ORS 167.080, Displaying obscene materials to minors;
(yyyyy) ORS 167.212, Tampering with drug records;
(zzzzz) ORS 167.262, Adult using minor in commission of controlled substance offense;
(aaaaaa) ORS 167.315, Animal abuse II;
(bbbbbb) ORS 167.320, Animal abuse I;
(cccccc) ORS 167.322, Aggravated animal abuse I;
(dddddd) ORS 167.333, Sexual assault of animal;
(eeeeee) ORS 181.599, Failure to report as sex offender;
(ffffff) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;
(gggggg) ORS 411.630, Unlawfully obtaining public assistance;
(hhhhhh) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
(iiiiii) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
(jjjjjj) ORS 471.410, Providing liquor to person under 21 or to intoxicated
(kkkkkk) ORS 475.525, Sale of drug paraphernalia prohibited;
(llllll) ORS 475.805, Providing hypodermic device to minor prohibited;
(mmmmmm) ORS 475.840, Prohibited acts generally (regarding drug crimes);
(nnnnnn) ORS 475.846, Unlawful manufacture of heroin;
(oooooo) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school;
(pppppp) ORS 475.850, Unlawful delivery of heroin;
(qqqqqq) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;
(rrrrrr) ORS 475.854, Unlawful possession of heroin;
(ssssss) ORS 475.856, Unlawful manufacture of marijuana;
(tttttt) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;
(uuuuuu) ORS 475.860, Unlawful delivery of marijuana;
(vvvvvv) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;
(wwwwww) ORS 475.864, Unlawful possession of marijuana;
(xxxxxx) ORS 475.866, Unlawful manufacture of 3,4 methylenedioxymethamphetamine;
(yyyyyy) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
(zzzzzz) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
(aaaaaaa) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
(bbbbbbb) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
(ccccccc) ORS 475.876, Unlawful manufacture of cocaine;
(ddddddd) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;
(eeeeeee) ORS 475.880, Unlawful delivery of cocaine;
(fffffff) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;
(ggggggg) ORS 475.884, Unlawful possession of cocaine;
(hhhhhhh) ORS 475.886, Unlawful manufacture of methamphetamine;
(iiiiiii) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school;
(jjjjjjj) ORS 475.890, Unlawful delivery of methamphetamine;
(kkkkkkk) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;
(lllllll) ORS 475.894, Unlawful possession of methamphetamine;
(mmmmmmm) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1,000 feet of school;
(nnnnnnn) ORS 475.906, Penalties for distribution to minors;
(ooooooo) ORS 475.908, Causing another person to ingest a controlled substance;
(ppppppp) ORS 475.910, Application of controlled substance to the body of another person;
(qqqqqqq) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);
(rrrrrrr) ORS 475.916, Prohibited acts involving records and fraud;
(sssssss) ORS 475.918, Falsifying drug test results;
(ttttttt) ORS 475.920, Providing drug test falsification equipment
(uuuuuuu) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
(vvvvvvv) ORS 475.975, Unlawful possession and distribution of iodine in its elemental form;
(wwwwwww) ORS 475.976, Unlawful possession and distribution of iodine matrix;
(xxxxxxx) ORS 475.977, Possessing or disposing of methamphetamine manufacturing waste;
(yyyyyyy) ORS 677.080, Prohibited acts (regarding the practice of medicine);
(zzzzzzz) ORS 803.080, Unlawfully publishing certificate of title forms prohibited;
(aaaaaaaa) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
(bbbbbbbb) ORS 807.500, Unlawful production of certain documents; affirmative defense;
(cccccccc) ORS 807.520, False swearing to receive license;
(dddddddd) ORS 807.530, False application for license;
(eeeeeeee) ORS 807.620, Giving false information to police officer;
(ffffffff) ORS 811.182, Criminal driving while suspended or revoked;
(gggggggg) ORS 811.540, Fleeing or attempting to elude police officer;

(hhhhhhhh) ORS 811.700, Failure to perform duties of driver when property is damaged;

(iiiiiiii) ORS 811.705, Failure to perform duties of driver to injured persons;

(jjjjjjjj) ORS 811.740, False accident report;

(kkkkkkkk) ORS 813.010, Driving under the influence of intoxicants (DUII);

(llllllll) ORS 819.300, Possession of a stolen vehicle;

(mmmmmmmm) ORS 819.310, Trafficking in stolen vehicles;

(nnnnnnnn) ORS 822.605, False swearing relating to regulation of vehicle related businesses;

(oooooooo) ORS 830.035/990, Fleeing or attempting to elude a peace officer (small watercraft);

(pppppppp) ORS 830.053/990, Fraudulent report of theft of boat;

(qqqqqqqq) ORS 830.325, Operating boat while under the influence of intoxicating liquor or controlled substance;

(rrrrrrrr) ORS 830.475, Duties of operators and witnesses at accidents;

(ssssssss) Any federal crime;

(tttttttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;

(uuuuuuuu) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that an authorized designee determines is relevant to performance under the subject individual's license or registration;

(vvvvvvvv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;

(wwwwwwww) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(xxxxxxxx) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(yyyyyyyy) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(2) Ten-Year Review Crimes.

(a) ORS 133.076, Failure to appear on criminal citation;

(b) ORS 162.075, False swearing;

(c) ORS 162.145, Escape III;

(d) ORS 162.175, Unauthorized departure;

(e) ORS 162.185, Supplying contraband;

(f) ORS 162.195, Failure to appear II;

(g) ORS 162.205, Failure to appear I;

(h) ORS 162.247, Interfering with a peace officer or parole & probation officer;

(i) ORS 162.285, Tampering with a witness;

(j) ORS 162.295, Tampering with physical evidence;

(k) ORS 162.315, Resisting arrest;

(l) ORS 162.335, Compounding;

(m) ORS 162.365, Criminal impersonation;

(n) ORS 162.369, Possession of false law enforcement identification card;

(o) ORS 162.375, Initiating a false report;

(p) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;

(q) ORS 163.195, Recklessly endangering another person;

(r) ORS 163.200, Criminal mistreatment II;

(s) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;

(t) ORS 163.245, Custodial interference II;

(u) ORS 163.435, Contributing to the sexual delinquency of a minor;

(v) ORS 163.445, Sexual misconduct;

(w) ORS 163.467, Private indecency;

(x) ORS 163.700, Invasion of personal privacy;

(y) ORS 164.043, Theft III;

(z) ORS 164.140, Criminal possession of rented or leased personal property;

(aa) ORS 164.272, Unlawful entry into motor vehicle;

(bb) ORS 164.335, Reckless burning;

(cc) ORS 164.354, Criminal Mischief II;

(dd) ORS 165.037, Criminal simulation;

(ee) ORS 165.070, Possessing fraudulent communications device;

(ff) ORS 165.540, Obtaining contents of communication;

(gg) ORS 165.543, Interception of communications;

(hh) ORS 165.570, Improper use of emergency reporting system;

(ii) ORS 165.572, Interference with making a report;

(jj) ORS 165.577, Cellular counterfeiting III;

(kk) ORS 165.579, Cellular counterfeiting II;

(ll) ORS 165.692, Making false claim for health care payment;

(mm) ORS 166.023, Disorderly conduct I;

(nn) ORS 166.025, Disorderly conduct II;

(oo) ORS 166.065, Harassment;

(pp) ORS 166.076, Abuse of a memorial to the dead;

(qq) ORS 166.116, Interfering with public transportation;

(rr) ORS 166.180, Negligently wounding another;

(ss) ORS 166.190, Pointing firearm at another;

(tt) ORS 166.240, Carrying of concealed weapon;

(uu) ORS 166.250, Unlawful possession of firearms;

(vv) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;

(ww) ORS 166.382, Possession of destructive device prohibited;

(xx) ORS 166.384, Unlawful manufacture of destructive device;

(yy) ORS 166.470, Limitations and conditions for sales of firearms;

(zz) ORS 166.480, Sale or gift of explosives to children;

(aaa) ORS 166.649, Throwing an object off an overpass II;

(bbb) ORS 166.651, Throwing an object off an overpass I;

(ccc) ORS 166.660, Unlawful paramilitary activity;

(ddd) ORS 167.007, Prostitution;

(eee) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;

(fff) ORS 167.222, Frequenting a place where controlled substances are used;

(ggg) ORS 167.337, Interfering with law enforcement animal;

(hhh) ORS 433.010, Spreading disease (willfully) prohibited;

(iii) ORS 475.900, Commercial drug offense;

(jjj) ORS 475.912, Unlawful delivery of imitation controlled substance;

(kkk) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);

(lll) ORS 475.950, Failure to report precursor substance;

(mmm) ORS 475.955, Failure to report missing precursor substances;

(nnn) ORS 475.960, Illegally selling drug equipment;

(ooo) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;

(ppp) ORS 475.965, Providing false information on precursor substances report;

(qqq) ORS 475.979 Unlawful possession of lithium or sodium metal;

(rrr) ORS 807.580, Using invalid license;

(sss) ORS 811.140, Reckless driving;

(ttt) ORS 819.420, Failure to obtain vehicle identification number for vehicle with altered or removed number;

(uuu) ORS 819.430, Trafficking in vehicles with destroyed or altered identification numbers;

(vvv) ORS 830.730/990, False information to peace officer or State Marine Board;

(www) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;

(xxx) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that an authorized designee determines is relevant to performance of the subject individual's license or registration;

(yyy) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;

(zzz) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(aaaa) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(bbbb) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(3) Five-Year Review Crimes.

(a) ORS 164.245, Criminal trespass II;

(b) ORS 164.345, Criminal mischief III;

(c) ORS 165.805, Misrepresentation of age by a minor;
(d) ORS 166.090, Telephonic harassment;
(e) ORS 166.416, Providing false information in connection with a transfer of a firearm;
(f) ORS 166.425, Unlawful purchase of firearm;
(g) ORS 418.630, Operating uncertified foster home;
(h) ORS 685.990, Violations pertaining to naturopathic medicine;
(i) ORS 803.070, False statement in application or assignment;
(j) ORS 803.075, False swearing prohibited;
(k) ORS 803.375, False application prohibited;
(l) ORS 803.385, False swearing relating to registration;
(m) ORS 807.430, Misuse of identification card;
(n) ORS 807.510, Transfer of documents for purposes of misrepresentation;
(o) ORS 807.590, Permitting misuse of license;
(p) ORS 807.600, Using another's license;
(q) ORS 822.005, Acting as vehicle dealer without certificate;
(r) ORS 822.045, Crimes relating to conducting a vehicle dealer business;
(s) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435 or 161.450;
(t) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;
(u) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or
(v) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(4) An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the criminal background fitness determination.

(5) A subject individual's criminal background fitness determination shall not be denied under these rules based on the existence or contents of a record that has been expunged pursuant to ORS 419A.260 and 419A.262 or other similar process under the laws of this state or another jurisdiction.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0040
Incomplete Criminal Background Application

The agency will close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision when:

(1) The subject individual submits a written request to withdraw a criminal background application for a new license or registration, or license or registration renewal, or otherwise requests the agency to terminate a criminal records check;

(2) The subject individual does not provide the agency all of the materials and information required under OAR 863-005-0010 within a reasonable period of time;

(3) A subject individual does not respond to an authorized designee's request for additional information within a reasonable period of time; or

(4) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 863-005-0020.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0050
Notice to Subject Individual of Incomplete Criminal Background Application

(1) When an authorized designee proposes to close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision the authorized designee shall:

(a) Provide written notice via first class mail to the subject individual within 14 calendar days of a decision to terminate the subject individual's criminal background fitness determination due to incompleteness;

(b) State the reason the subject individual's criminal background fitness determination application was found to be incomplete; and

(c) Record on the notice the date the criminal background fitness determination application was terminated and closed due to incompleteness.

(2) A subject individual that receives notice that the agency intends to terminate a criminal background fitness determination due to incompleteness may submit a written request to the agency requesting the agency to continue the fitness determination process. A subject individual's written request to continue the criminal background fitness determination process must be received by the agency within 30 days of the date of the original notice of termination. The request must include all information previously requested by the agency but not provided by the subject individual. If a subject individual fails to submit a written request to continue a fitness determination process within 30 days of receiving the notice described in section (1) of this rule, the subject individual shall be required to submit a new background check application, fingerprint card and fee.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0060
Notice to Subject Individual of Criminal Background Fitness Determination

(1) An authorized designee shall provide written notice to a subject individual that the agency has completed a requested criminal background fitness determination. The notice shall state the date the agency completed the criminal background fitness determination and the agency's decision to approve or deny a criminal background fitness determination application. If the agency denies a criminal background fitness determination, the notice shall state the reason for the denial based on the factors described in OAR 863-005-0020(5).

(2) The agency shall mail notice of a criminal background fitness determination via first class mail to the address provided by the subject individual on the agency background check application, or to an updated address as provided in writing by the subject individual no later than 14 calendar days after the date the agency has completed a criminal background fitness determination.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0070
Appeals

(1) A subject individual may not appeal a criminal background fitness determination or a decision to close a criminal background fitness determination for reason of incompleteness.

(2) If a licensing or registration applicant wishes to, they may complete any additional pre-licensing/registration requirements and submit a completed license/registration application together with the required fees. Upon review of a completed license/registration application, the agency shall issue a "notice of intent to deny" that describes the reason for the denial. The notice shall also include information required by OAR 137-003-0505 that describes the subject individual's right to request a contested case hearing to appeal the agency's decision.

(3) Contested case hearings on criminal background fitness determinations shall be closed to non-participants.

(4) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(5) Any challenge to any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation must follow the appeal process prescribed by the reporting agency.

(6) If the subject individual successfully challenges the accuracy or completeness of any 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 the Federal Bureau of Investigation that the agency relied on to support a decision to deny a criminal background fitness determination, the subject individual may request the agency to conduct a new criminal records check and re-evaluate the original criminal background fitness determination made under OAR 863-005-0020. The subject individual shall submit a new background check application to the agency within 30 days of the date the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or

the Federal Bureau of Investigation issues a corrected criminal background report.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0080
Recordkeeping and Confidentiality

(1) An authorized designee shall maintain all documents on a criminal background fitness determination or the closing of a criminal background fitness determination due to incompleteness in accordance with applicable archive retention requirements.

(2) Records the agency receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to Law Enforcement Data System (LEDS) reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534.

(3) Within the agency, only an authorized designee shall have access to records the agency receives from the Oregon Department of State Police resulting from a criminal records check.

(4) An authorized designee shall maintain and disclose any records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police in OAR chapter 257, division 15, these rules, and any written agreement between the agency and the Oregon Department of State Police.

(5) If a fingerprint-based criminal records check was conducted on a subject individual, the agency shall permit that subject individual to inspect the state and federal criminal offender information, unless prohibited by state or federal law.

(6) If a subject individual with a right to inspect criminal offender information under section (5) of this rule requests, the agency shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by state or federal law.

(7) In addition to the records described in section (2) of this rule, the agency shall treat all records received or created under these rules that concern a subject individual's criminal history as confidential pursuant to ORS 181.534.

(8) Within the agency, only an authorized designee shall have access to the records identified under section (7) of this rule.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0090
Fees

The agency shall charge a fee for acquiring criminal offender information to make a criminal background fitness determination, including re-evaluations of criminal background determinations made pursuant to OAR 863-005-0070. The fee shall not exceed the fee(s) charged the agency by the Oregon Department of State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181.534, 696.022, 696.790
Stats. Implemented: ORS 181.534
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

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Secretary of State, Archives Division
Chapter 166

Rule Caption: Splits retention of County records Land Division Plats; Corrects County Survey Field Records.
Adm. Order No.: OSA 2-2008
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 5-30-08
Notice Publication Date: 4-1-2008
Rules Amended: 166-150-0205
Subject: Allows for permanent retention to apply only to the Final Accepted Plans vice all records pertaining to Land Division Plats on the County General Records Retention Schedule; thereby, freeing up storage space for agencies through removing the requirements to retain other Land Division Plat records permanently. Also, makes correction to records description for OAR 166-150-0205(7) by placing Monumentation records in the records description for Land Division Plats OAR 166-150-0205(4).
Rules Coordinator: Julie Yamaka—(503) 378-5199

166-150-0205
Surveyor Records

(1) **Bench Marks Records** Records document bench marks placed by the United States Geological Survey, United States Corps of Engineers, Oregon Department of Transportation, a city surveyor's office, or the County Surveyor's office to denote elevations above sea level. Records may include books, maps, cards, and other documents. Information contained in the records includes location, monument number, elevation, description, and related data. Series may include horizontal control surveys. Records are usually filed numerically by bench mark number. (Minimum retention: Permanent)

(2) **Corner Restoration (Bearing Tree) Records** Records identify specific characteristics of government corners and their accessories. Records may include the original description of the corner; description of the new corner; dates and names of witnesses; field notes or diagrams of the corner, brass cap, or accessories; and photographs. (Minimum retention: Permanent)

(3) **County Road Records** Records document the official description of county roads determined by surveying and mapping county roads and city streets which are extensions or segments of county roads. Records include road surveyor field notes, field books, maps, and road registers. Information may include legal description of the road; road name and number; plans and profiles; and may also include records of the petition and resolution process and reference to corner and road monuments. (Minimum retention: Permanent)

(4) **Land Division Plats** Plats are used to create the title identity to a piece of land and may include subdivision, partition, condominium, or cemetery plats. Records include map and accompanying survey narrative, property description, declaration by owner, dedication of streets to public use, and approval by public bodies. Records may also include plat and partition checking files which include subdivision guarantees, closure sheets, fee checks and receipts, findings, and decisions. Records may also include post monumentation records including deposits, requests for release of funds and interior corner monumentation documents. The plats are produced by registered professional land surveyors. The original is filed with the County Clerk and generally a true and exact copy is filed with the County Surveyor. (Minimum retention: (a) Final Accepted Plats Permanent (b) All other plat records: 3 years)

(5) **Records of Survey Records** identify land boundaries and disclose the finding, establishment, or restoration of survey corners or monuments. Records include maps and accompanying survey narrative and description of corners. The surveys are produced by registered professional land surveyors and then reviewed, accepted, and filed by the County Surveyor. Records may be called Bearing Tree Records or Survey Maps and may include donation land claims and other federal land grant surveys such as GLO (General Land Office) or BLM (Bureau of Land Management) surveys. Records may also include the Global Positioning System (GPS) and other surveys produced with new technologies and required to be filed with the County Surveyor. (Minimum retention: Permanent)

(6) **Reference Maps** Maps may include copies of highway, railroad, topographical, flood plain, and other maps used for reference. (Minimum retention: Retain until superseded or obsolete)

(7) **Survey Field Records** Records include detailed field notes and other records related to surveys done for boundary work, local improvement districts, special requests, and other purposes such as dams, canals, and power lines. Field records may include investigative surveys made of crime or accident scenes at the request of law enforcement officials; notes on traverses, boundary and right-of-way location, construction (including levels, cuts, and grades), and other information; as well as sketches related to the survey. (Minimum retention: (a) Boundary and right-of-way location records: Permanent (b) All other records: 10 years after substantial completion of project)

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 4-2004, f. & cert. ef. 9-1-04; OSA 2-2008, f. & cert. ef. 5-30-08

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Amends licensure definitions: "grade levels" (2) & "recent experience" (51)(e).

Adm. Order No.: TSPC 3-2008(Temp)
Filed with Sec. of State: 5-30-2008
Certified to be Effective: 5-30-08 thru 11-25-08
Notice Publication Date:
Rules Amended: 584-005-0005
Subject: 1) 584-005-0005: Clarifies definition of recent experience and adds definition for "all levels."
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-005-0005
Definitions

These definitions apply to Divisions 001-100 unless otherwise indicated by the context:

(1) "Administrators:" Superintendents, assistant superintendents, principals, vice principals, and such other personnel, regardless of title, whose positions require them to evaluate other licensed personnel.

(2) "All Grade Levels:" Grades prekindergarten through 12 (prek-12).

(3) "Alternative Assessment:" Procedures established by the Commission for candidates seeking licensure who fail to achieve a passing score on required matter or specialty area licensure tests for endorsement or authorization.

(4) "Alternative Education Program or School:" A private alternative education program or school registered with the Oregon Department of Education or a public alternative education program or school operated by a school district, education service district, or community college, which is established to serve students identified under ORS 339.250(6) and other students whose academic or professional technical interests and needs are best served through participation in such programs. (See OAR 584-036-0015.)

(5) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license. As used in these rules, "application" includes the Application Form, C-1, the fee, and all supporting documents necessary for the evaluation for the license.

(6) "Appropriately Assigned:" Assignments for administrator, teacher, supervisor, school counselor, school psychologist, or school nurse duties for which the person involved holds the proper license, endorsements and authorizations. (See OAR 584-036-0081.)

(7) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. governmental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" below.

(8) "Approved Program:" An Oregon program of educator preparation approved by TSPC and offered by a regionally accredited Oregon institution. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction authorized to approve educator preparation programs.

(9) "Assistant Superintendent:" A superintendent's immediate subordinate who evaluates licensed personnel. May also be designated Deputy or Associate Superintendent.

(10) "Athletic Coaches:" Licensed personnel employed full time or part time for purposes of participation in interscholastic athletics and whose duties include instruction of students, preprimary through grade twelve. A student teacher or intern may serve as an assistant coach without licensure if assigned for a full-time practicum in the school in which he or she is coaching. (See OAR 584-036-0015.)

(11) "Authorization Level:" The grade levels in which a person may teach, i.e., early childhood, elementary, middle level and high school as defined in OAR 584-060-0051.

(12) "Commission:" Teacher Standards and Practices Commission (TSPC).

(13) "Competencies:" Ability to apply knowledge and skills appropriately and effectively in achieving the expected outcomes.

(14) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal requirements and has obtained the institution's recommendation for licensure.

(15) "Conditional Assignment:" (Formerly "Missassignment") Assignment of a licensed educator to a position for which he or she does not hold the subject or specialty area endorsement or authorization level required by the rules for licensure. (See OAR 584-036-0081).

(16) "Consortium:" An advisory body to the institution in reviewing, evaluating, and making recommendations on the design, implementation, evaluation, and modification of the program.

(17) "Continuing Professional Development Advisor:" A person selected by an educator and approved by the educator's supervisor, such as a college or university advisor, a peer coach, or a qualified member of an agency or professional organization.

(18) "Distance Learning Teacher:" A teacher who meets the criteria in OAR 584-036-0017 and provides live interactive instruction transmitted from a remote location or who delivers online education either from within Oregon or from another state and who is employed by one or more Oregon public school districts to teach public school students.

(19) "Domain:" An area of professional competency under which a teacher may select coursework or other approved activities for continuing professional development. (See OAR 584-090-0010.)

(20) "Education Service District (ESD):" A district created under ORS 334.010 that provides regional educational services to component school districts.

(21) "Educator:" Any person who is authorized to be employed in the instructional program of the public schools, public charter schools and ESDs, and holds a license to teach, administer, supervise, counsel or provide school psychology services.

(22) "Emergency License:" Issued by TSPC when a school district demonstrates extenuating circumstances that merits the issuance of the license in order to protect the district's programs or students.

(23) "Endorsement:" The subject matter or specialty education field or grade authorization in which the individual is licensed to teach.

(24) "Executive Director:" The Executive Director of the Commission. (See ORS 342.410.)

(25) "Expired License:" A license for which an application for renewal was not received by TSPC prior to the date of expiration stated on the license.

(26) "Field Experience:" Learning activities designed to develop professional competence through observing, assisting, or teaching in a public or approved non-public school.

(27) "Instructional Assistant:" A non-licensed position of employment in a school district assigned to assist a licensed teacher in a supportive role in the classroom working directly with students.

(28) "Instructional Faculty:" Full-time and part-time faculty who teach professional courses and/or supervise field-centered activities and student teachers.

(29) "Intern:" A student of an approved institution who serves as a teacher, personnel specialist, or administrator under the supervision of the institution and of the school district in order to acquire practical experience in lieu of student teaching or supervised practica. Interns may receive both academic credit from the institution and financial compensation from the school district. Interns may serve as assistant coaches.

(30) "Joint Application:" Submitted by the school district in cooperation with the applicant.

(31) "Liaison Officer:" The person designated by the unit to submit all program modifications for TSPC approval, issue all recommendations for licensure under the approved program, authorize all waivers of professional courses for students enrolled in the program, and handle all correspondence between TSPC and the unit.

(32) "Major Modifications:" Changes of program philosophy, curricula, practica, resources, personnel, or performance standards.

(33) "Major Traffic Violation:" Includes driving while under the influence of intoxicants (ORS 487.540); reckless driving (487.550); fleeing or attempting to elude a police officer (487.555); driving while license is suspended or revoked or beyond license restrictions (487.560); or failure to perform the duties of a driver or witness at an accident (483.602).

(34) "Mentor:" Educators who have demonstrated the appropriate subject matter knowledge and teaching and/or administrative skills, which when assisting beginning educators, should substantially improve the induction and professional growth of beginning educators in this state.

(35) "Misassignment:" See definition of "Conditional Assignment" above.

(36) "National Board For Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate to qualified educators.

(37) "Oregon Schools:" Includes public school districts, education service districts, registered private schools preprimary through grade twelve, state and federal schools, special state-supported schools, and public charter schools in Oregon serving students ages three through twenty-one, private schools accredited by the Northwest Commission on College and Universities, and private proprietary career schools registered by the Oregon Department of Education.

(38) "Out of State Licenses or Certificates:" A certificate or license valid for full-time employment, at least equivalent to the Oregon license being requested, issued by one of the United States, a U.S. jurisdiction (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands), or the U.S. Department of Defense.

(39) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator.

(40) "Personnel Service:" A type of license issued to counselors, supervisors, and school psychologists.

(41) "Practicum or Practica:" All supervised field experiences other than student teaching or internships. A practicum may be part of the field experience necessary to add an endorsement.

(42) "PRAXIS:" A series of professional assessments for beginning educators produced and administered by Educational Testing Service (ETS) and adopted by TSPC as licensure examinations.

(43) "Principal:" The administrator of each school building or buildings as designated by the school district board.

(44) "Private Schools:" A private school, preprimary through grade twelve, registered with the Oregon Department of Education in compliance with provisions of ORS 345.525 and 345.535 or approved or registered by another U.S. jurisdiction or government.

(45) "Professional Development Plan:" A plan for personal professional growth during the next licensure renewal cycle.

(46) "Professional Development Units (PDU):" A unit of domain-related activity that equals one clock hour of professional development and contributes to completion of an educator's professional development plan. (See OAR 584-090-001 et seq.)

(47) "Program Administrator:" Managers of school programs and coordinators of district-wide programs that are accountable at the building level.

(48) "Program Review Committee:" Committee appointed by the Commission to conduct an on-site review for purposes of approval of an educator preparation program.

(49) "Public Funds:" All monies expended by public school districts and for which the school board has responsibility, including funds from local, state, federal, and private sources. (See ORS 342.120(9).)

(50) "Public Schools:" Public school districts, education service districts and public charter school created under ORS Ch. 338, which are supported by local and state public funds and for which the school board has responsibility, for the program of instruction carried out in that school.

(51) "Recent Experience:" An application for a license submitted to TSPC either within three years following completion of the required coursework in an approved program or during the effective period of a comparable license and within three years of the last year of experience on such license.

(a) If more than three years have elapsed since completion of the required coursework in the program or since the last year of public school or regionally accredited private school experience on a license appropriate for the assignment, recency may be met by completion of nine quarter hours or six semester hours of additional preparation from an accredited institution germane to the license or endorsement requested.

(b) The additional credits must be completed during the three-year period prior to the application and must help the applicant keep abreast of current needs of public schools.

(c) If the comparable license expired prior to application, a Preparation for Teaching Report, Form C-2, must be submitted.

(d) Completion of the testing requirements alone will not meet the definition of "recent experience" if the coursework in the program was completed more than three years prior to the application for licensure.

(e) Recent experience may also include other education experience consistent with OAR 584-048-0015 and approved by the executive director.

(52) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission;, Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools, Commission on Higher Education; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(53) "Reinstatement:" Restoration of the validity of a license which has expired, been suspended, or been revoked. (See OAR 584-050-0015.)

(54) "Renewal:" Extension of validity of a current license. An application for renewal must be submitted prior to the expiration date stated on the license. (See OAR 584 div 48.)

(55) "School:" A single school building or combination of buildings which the school board designates as a school.

(56) "School Administrator:" The principal, vice principals and assistant principals at each school.

(57) "School Board:" The board of directors of a local school district or an education service district, the governing board of a public charter school, a registered private school, or the directors of a state, federal, or special state-supported school.

(58) "School Counselor:" A licensed employee of the district assigned to assist students to: develop decision-making skills, obtain information about themselves, understand opportunities and alternatives available in educational programs, set tentative career and educational goals, accept increasing responsibilities for their own actions, develop skills in interpersonal relations, and utilize school and community resources.

(59) "School District:" Includes administrative school districts; common school districts; joint school districts; union high school districts; county units; education service districts; registered private schools; and state, federal, and special state-supported schools. May also include school districts from other states.

(60) "School Nurse:" A registered nurse who is licensed by the Teacher Standards and Practices Commission as qualified to conduct and coordinate the health service programs of a school. (See OAR 584 div. 21.)

(61) "School Psychologist:" A licensed employee of the district assigned to: assessment of students' mental aptitude, emotional development, motor skills, or educational progress; designing educational programs for students and conferring with licensed personnel regarding such programs; and consulting with parents and students regarding interpretation of assessments and the design of educational programs. (See OAR 584 div. 44 and 70.)

(62) "School Supervisor:" Educators who assist, supervise, and evaluate students enrolled in the field-centered activities, including but not limited to, practica, internships and student teaching. (See OAR 584 div. 17.)

(63) "Self-Contained Classroom:" An assignment for teaching in grades preprimary through nine in which the teacher has primary responsibility for the curriculum.

(64) "Skills:" Ability to use knowledge effectively in the performance of specific tasks typical of those required in an educational position.

(65) "State Board:" The Oregon State Board of Education.

(66) "Student Teacher:" A student of an approved teacher education institution who is assigned to a public or approved private school for professional practica under the supervision of qualified personnel. Student teachers may provide instruction or may serve as assistant coaches.

(67) "Successful Experience:" If the educator was permitted to fulfill the contract with the district, the experience is deemed successful.

(68) "Superintendent:" The district's chief administrator who reports directly to the school board.

(69) "Supervisor of Licensed Personnel:" A person assigned to a position which includes the on-the-job supervision or evaluation of licensed personnel. Should not be confused with "School Supervisor" above.

(70) "Teacher:" Includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

(71) "Teacher Education Programs:" Programs preparing teachers, personnel service specialists, or administrators. Oregon Revised Statutes use the term "teacher education" to refer to all programs preparing educational personnel for public elementary and secondary schools, not exclusive to those for classroom teachers.

(72) "Transcripts:" An institution-sealed official record of academic preparation which bears the signature of the registrar and the seal of the institution. Photocopies are not acceptable.

(73) "TSPC:" Teacher Standards and Practices Commission.

(74) "Unit:" The institution, college, school, department, or other administrative body with the responsibility for managing or coordinating all programs offered for the initial and continuing preparation of teachers and other school personnel, regardless of where these programs are administratively housed.

(75) "Vice Principal:" A principal's immediate subordinate assigned to coordination of instruction, discipline, student activities, or supervision or evaluation of staff.

(76) "Violation of Licensure:" Employment by a public school of a teacher or school nurse without a valid license or Conditional Assignment Permit above.

(77) "Work Samples:" A designed and implemented unit of study that demonstrates capacity to foster student learning.

(78) "Year of Experience:" A period of at least eight consecutive months of full-time work or two consecutive years of one-half time or more while holding a license valid for the assignment.

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

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430 & 342.455 - 342.495

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 5-2000, f. & cert. ef. 9-20-00; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2002, f. & cert. ef. 3-15-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 3-2008(Temp), f. & cert. ef. 5-30-08 thru 11-25-08

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Rule Caption: Amends Highly Qualified definitions to remove alternative assessment from definition of rigorous state test. (11)(c).
Adm. Order No.: TSPC 4-2008(Temp)
Filed with Sec. of State: 6-5-2008
Certified to be Effective: 6-5-08 thru 11-30-08
Notice Publication Date:
Rules Amended: 584-100-0006
Subject: 584-100-0006 Definitions: Removes "alternative assessment" from the definition of rigorous state test.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-100-0006
Definitions

These definitions apply only to division 100.

(1) "Advanced Credential or Advanced Certification" for teachers holding middle level or secondary authorization levels:

(a) A Continuing Teaching License; or

(b) A Standard Teaching License with a Standard endorsement in the core academic subject; or

(c) A certificate from the National Board for Professional Teaching Standards in the core academic subject area.

(2) "Bachelor's Degree":

(a) A degree obtained from a regionally accredited institution in the United States; or

(b) A degree from a foreign institution that is appropriately accredited as affirmed through the Oregon Office of Degree Authorization; or

(c) A higher degree in the arts or sciences or an advanced degree in the professions from a regionally-accredited institution may validate a non-regionally accredited bachelor's degree.

(3) "Complete School Year": Any related teaching assignment for 135 instructional days in a school year. Exceptions may be appealed to the Executive Director pursuant to OAR 584-052-0027.

(4) "Core Academic Subjects":

(a) English (Language Arts);

(b) Reading or Language Arts (Reading or Language Arts)

(c) Mathematics (Basic or Advanced Mathematics);

(d) Science (Integrated Science, Biology, Chemistry, or Physics);

(e) Foreign Languages (Spanish, French, German, Russian, Japanese, or Latin);

(f) Civics and Government (Social Studies);

(g) Economics (Social Studies);

(h) Arts (Art, Music, or Drama);

(i) History (Social Studies);

(j) Geography (Social Studies).

(5) "Elementary Classroom": Any combination of self-contained classrooms in grades preprimary through eight in any school identified as an elementary school pursuant to OAR 581-022-0102(25).

(6) "Elementary Teacher": An educator teaching in a self-contained classroom grades preprimary through eight.

(7) "Middle-level Classroom": Any classrooms in grades seven or eight organized departmentally by subject matter.

(8) "New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or regionally accredited private school less than three complete school years. (See definition of "Complete School Year" above)

(9) "Newly Hired Teacher": A teacher hired after the first day of the 2002-2003 school year in a Title IA program or Title IA school-wide program. The teacher is not considered "newly hired" if the teacher is already employed in the district and transferred into a Title IA program or Title IA school-wide program.

(10) "Not New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or private school for a total of three or more complete school years. (See definition of "Complete School Year" above.)

(11) "Rigorous State Test":

(a) The Multiple Subjects Assessment for Teachers (MSAT) test for elementary or middle level; the ORELA Multiple Subjects Examination; or

(b) The appropriate Praxis II or NTE Subject-matter test for middle-level and high school; or

(c) Another state's subject-matter licensure exam designated as a "rigorous state test."

(12) "Secondary School or high school":

(a) A combination of grades ten through twelve in districts providing a junior high school containing grade nine; or

(b) Any combination of grades nine through twelve organized as a separate unit; or

(c) Grades nine through twelve housed with grades preprimary through twelve.

(13) "Self-contained Classroom": An assignment for teaching in grades preprimary through eight in which the teacher has full responsibility for the curriculum.

(14) "Subject-matter competency": Subject matter competency may be demonstrated through any one of the following:

(a) Passing the appropriate "rigorous state test;" or

(b) Having a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(c) Having coursework equivalent to a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(d) Having a graduate degree in the subject matter area (does not apply to elementary endorsements or authorizations); or

(e) Satisfying the Highly Objective Uniform State Standard of Evaluation (HOUSSE) requirements set forth in these rules if have taught three complete years or more.

(15) "Undergraduate Major or Coursework Equivalent to a Major": Thirty-four (34) quarter hours or twenty-three (23) semester hours of undergraduate or graduate coursework in core academic subject matter numbered 100 level or above, from a regionally accredited college or university. (See definition of "Bachelor's Degree" for undergraduate credits obtained from an unaccredited college or university.)

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 4-2008(Temp), f. & cert. ef. 6-5-08 thru 11-30-08

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Rule Caption: Adopt, amend and repeal rules regarding Early Childhood Education, charter school fees, field placement and housekeeping issues.
Adm. Order No.: TSPC 5-2008
Filed with Sec. of State: 6-13-2008
Certified to be Effective: 6-13-08
Notice Publication Date: 4-1-2008
Rules Adopted: 584-065-0120
Rules Amended: 584-017-0115, 584-017-0185, 584-021-0105, 584-036-0055, 584-046-0003, 584-046-0016, 584-046-0019, 584-046-0020, 584-046-0021, 584-070-0012
Rules Repealed: 584-021-0175, 584-036-0060, 584-048-0045
Subject: 1) Adopt new rule for Early Childhood Endorsement.

2) Amend Division 17 Early Childhood Authorization.

3) Eliminate requirement for work sample at two authorization levels.

4) Clarifies the amount of time required for a practicum.

5) Updates provisions related to Basic and Standard Administrative licenses.

6) Clarifies fees for charter school registrations.

7) Removes obsolete rule references and other housekeeping amendments.

8) Repeals outdated rules.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0115
Early Childhood Education Authorization

The unit assures that candidates for an Early Childhood Education Authorization demonstrate knowledge, skills, and competencies in a pre-kindergarten, kindergarten or an elementary setting.

(1) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students ages three through grade four within the cultural and community context of the teacher education institution and cooperating school districts.

(2) Candidates articulate and apply a philosophy of education which is appropriate to the students in pre-kindergarten and elementary grades and which ensures that students learn to think critically and integrate subject matter across disciplines.

(3) Candidates document broad knowledge of the subject matter, curriculum and methods needed to enable students to meet state and district standards by passing the commission-approved multiple subjects examination.

(4) Candidates complete student teaching or internship with students in grades pre-kindergarten through grade four. A practicum may substitute for student teaching if this is an additional authorization on an Initial, Initial I, Initial II or Continuing Teaching License.

(5) Special Education candidates may complete practica, student teaching, or internships in grades pre-kindergarten through grade four.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.165
Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2008, f. & cert. ef. 6-13-08

584-017-0185
Evidence of Effectiveness

(1) The unit assures that candidates provide evidence of effectiveness to foster student learning.

(2) Each student teacher preparing for an Initial I Teaching License assembles and analyzes two work samples to document the candidate's ability to demonstrate knowledge, skills and competencies as designated in OAR 584-017-0100. If a candidate is seeking more than one authorization level, the two work samples may be completed at either authorization level. Work samples include:

(a) Context of the school and classroom is explained, learners with special needs, TAG learners, ESOL learners and learners from diverse cultural and social backgrounds are described, adaptations for their learning needs are discussed, and prerequisite skills required for the unit are considered;

(b) Goals for the unit of study, which is generally two to five weeks in length, that vary in kind and complexity, but that include concept attainment and application of knowledge and skills;

(c) Instructional plans to accomplish the learning goals of the group(s) of students that include differentiation of instruction for all students listed in (a);

(d) Data on learning gains resulting from instruction, analyzed for each student, and summarized in relation to students' level of knowledge prior to instruction;

(e) Interpretation and explanation of the learning gains, or lack thereof; and

(f) A description of the uses to be made of the data on learning gains in planning subsequent instruction and in reporting student progress to the students and their parents.

(g) Purposeful attention to literacy instruction based upon content requirements, appropriate authorization level and student needs in at least one subject.

(3) Each candidate preparing for a Continuing Teaching License assembles a collection of evidence that documents the candidate's advanced knowledge, skills and competencies as designated in OAR 584-017-0160. The collection of evidence includes:

(a) Long term goals of study based on content goals and district standards that determine the knowledge and skills each student needs;

(b) Instructional plans that incorporate knowledge of subject matter, the developmental levels of the students and research-based educational practices that are sensitive to individual differences and diverse cultures;

(c) Evidence of the ability to establish a classroom climate that is conducive to learning for all students;

(d) Data on student progress toward attainment of long term goals, refinement of plans for instruction and establishment of alternative goals for students when necessary;

(e) Evidence of collaboration with parents, colleagues and community members to provide assistance to students and their families to promote learning;

(f) Evidence of the use of emerging research on teaching, learning and school improvement; and

(g) Evidence of participation in designing, evaluating and improving opportunities for teaching.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 7-2004, f. & cert. ef. 8-25-04; TSPC 8-2005, f. & cert. ef. 10-21-05; TSPC 1-2008(Temp), f. & cert. ef. 2-15-08 thru 8-13-08; TSPC 5-2008, f. & cert. ef. 6-13-08

584-021-0105
Definitions

As used in OAR chapter 584, division 021, unless otherwise indicated by the context, the following definitions apply:

(1) "Application": A request for an Oregon certificate authorizing service in public schools or a request for reinstatement or renewal of such certificate. As used in these rules, "application" includes the Application Form N-1, the fee, and all supporting documents necessary for the evaluation for the certificate.

(2) "Approved Institutions": Oregon colleges and universities regionally accredited for the preparation of nurses by the Oregon State Board of Nursing or for preparation of teachers by Teacher Standards and Practices Commission and other regionally accredited colleges or universities approved to prepare nurses or teachers by the state or governmental jurisdiction in which the institutions are located. All approved institutions must be accredited by the appropriate regional accrediting association.

(3) "Commission": The Teacher Standards and Practices Commission (TSPC).

(4) "Executive Director": The Executive Director for the Commission.

(5) "Expired Certificate": A certificate for which an application for renewal was not received by TSPC prior to the date of expiration stated on the certificate.

(6) "Joint Application": Submitted by the school board or school superintendent in cooperation with the applicant.

(7) "Nurse": A registered nurse who holds a current license issued by the Oregon State Board of Nursing. See also School Nurse.

(8) "Personal Qualifications": Personal qualifications for certification including possessing good moral character and mental and physical health necessary for employment as a school nurse.

(9) "Registered Private School": A private school, prekindergarten through grade twelve, registered with the Oregon Department of Education.

(10) "Reinstatement": Restoration of the validity of a certificate which has expired, been revoked, or been surrendered.

(11) "Renewal": Extension of validity of a current certificate. An application for renewal must be submitted prior to the expiration date stated on the certificate.

(12) "School Nurse": A registered nurse who is certified by the Teacher Standards and Practices Commission as qualified to conduct and coordinate the health service programs of a school.

(13) "Successful Experience": If the nurse was permitted to fulfill the contract with the district, the experience is deemed successful.

(14) "Volunteer Nurse": A registered nurse who serves without remuneration in a school health services program.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 183, 342.455 - 342.495
Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1982(Temp), f. & ef. 12-9-82; TS 1-1983, f. & ef. 2-9-83; TS 1-1987, f. & ef. 3-3-87; TS 3-1988, f. & cert. ef. 4-7-88; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08

584-036-0055
Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) The Commission issues the appropriate license at no additional cost if the applicant qualifies for it within 90 days from the date of the original application.

(3) The fee for evaluating an initial application for the following licenses is $100:

(a) Initial I License. The fee for an Initial I Teaching License issued immediately following the Initial Teaching License is $50.

(b) Initial II License;

(c) Basic License;

(d) Continuing License;

(e) Standard License;
(f) Restricted Transitional License;
(g) Limited License;
(h) American Indian Language License;
(i) Substitute License;
(j) Restricted Substitute License;
(k) Exceptional Administrator License;
(l) Three-Year Career and Technical Education License;
(m) Five-Year Career and Technical Education License;
(n) NCLB Alternative Route License;
(o) Emergency Teaching License;
(p) Five Year Teaching, Administrator or Personnel Service License.

(4) The fee for evaluating all applications based on completion of an out-of-state educator preparation program or an out of state license is $120. These licenses include, but are not limited to:
(a) Unrestricted Transitional License;
(b) Initial Teaching License.

(5) The fee for evaluating an application for renewal of any license is $100.

(6) The fee for each of the following circumstances is $20:
(a) A duplicate license for any reason;
(b) An approved extension to a provisional license; and
(c) Adding a district to an existing Restricted Substitute License.

(7) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is $100. No additional fee is required to add an endorsement in conjunction with an application for renewal or reinstatement of a license.

(8) The fee to evaluate an application for reinstatement of an expired license is $100 plus a late application fee of $25 for each month or portion of a month that the license has been expired to a maximum of $200 total. This does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration and the application for reinstatement.

(9) The fee for evaluating an application for reinstatement of a suspended license is $100.

(10) The fee for evaluating an application for reinstatement of a suspended charter school registration is $50.

(11) The fee for evaluating an application for reinstatement of a revoked license is $150 in addition to the $100 application fee for a total of $250. This does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration and the application for reinstatement.

(12) The fee for evaluating an application for reinstatement of a revoked charter school registration is $150 in addition to the $25 application fee for a total of $175.

(13) Forfeiture for a check which the applicant's bank will not honor is $25, unrelated to any evaluation fees. The total amount due shall be paid in cash or credit at the Commission's office or by a Money Order.

(14) There is no fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries.

(15) The fee for alternative assessment in lieu of the test of educational specialty is $100.

(16) The fee for expedited service for an emergency or other license is $99 plus the fee for the license as defined in this administrative rule.

(17) The fee for registration of a charter school teacher or administrator is $75 which includes the fee for required criminal records and fingerprinting costs.

(18) The fee to evaluate an application for reinstatement of an expired charter school registration is $25 plus a late application fee of $25 for each month or portion of a month that the registration has been expired to a maximum of $125 total. This does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration and the application for reinstatement.

(19) The fee for renewal of a charter school registration is $25.

(20) The fee for a criminal records check including fingerprinting is $62.

(21) The fee for a "highly qualified teacher" evaluation is $50.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200, 342.400 & 342.985
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08

584-046-0003
Administrative Licensure Under Superseded Standards

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Basic Administrative License with basic administrator or basic superintendent endorsement, issued for two years plus time to the applicant's next birth date and renewable under OAR 584-048.

(2) The applicant must have originally enrolled in a basic administrator or basic superintendent education program under standards established prior to January 1, 1998.

(3) It must be the judgment of the commission that the applicant will be subject to hardship if issued a 21st century initial license instead of a basic license. If the initial license is judged preferable, the applicant will not be required to add course work to the basic program, although institutions may make appropriate substitutions for partial updating.

(4) Recipients of a basic administrative license must pursue a Continuing Administrator License (see OAR 584-080).

(5) Applicants from out of state, or applicants who have completed an Oregon administrator preparation program subsequent to January 1, 1999, and have not been licensed in Oregon as an administrator by January 1, 2008, are not eligible for any license under this division of rules.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 5-2008, f. & cert. ef. 6-13-08

584-046-0016
Basic Administrator

An applicant for the basic administrator endorsement must:

(1) Have completed a master's degree from an approved teacher education institution; and

(2) Have completed 12 quarter hours of graduate preparation designed to develop competence in:

(a) Management, evaluation, and improvement of instruction to meet school district objectives;

(b) Supervision, professional development, and evaluation of personnel to insure effective instruction;

(c) Oregon school law; and

(d) Planning, preparation, and implementation of instructional budgets.

(3) Have completed five quarter hours of supervised practicum or internship in an administrative role. One year of full-time successful administrative experience in public schools or regionally accredited private schools on a valid state license is substituted for the practicum or internship required under this subsection .

(4) Verify three years of full-time successful public school or regionally accredited private school teaching experience.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 2-1986, f. 4-18-86, ef. 1-15-88; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 2-1993, f. 4-19-93, cert. ef. 1-15-94; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 5-2008, f. & cert. ef. 6-13-08

584-046-0019
Basic Superintendent

An applicant for the basic superintendent endorsement must:

(1) Have completed a master's degree from an approved teacher education institution; and

(2) Have completed 18 quarter hours of graduate preparation designed to develop competence in:

(a) Development, evaluation, and improvement of educational programs to meet school district objectives;

(b) Establishing and implementing personnel policies to insure the continuing effectiveness of personnel;

(c) Negotiation and administration;

(d) Oregon school law;

(e) Planning, preparation, and management of school district budgets; and

(f) School, board, and community relations.

(3) Have completed six quarter hours of supervised practicum or internship in an administrative role. One year of full-time successful administrative experience in public schools or regionally accredited private schools on a valid state license is substituted for the practicum or internship required under this subsection.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 & 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 2-1986, f. 4-18-86, cert. ef. 1-15-88; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 5-2008, f. & cert. ef. 6-13-08

584-046-0020
Standard Administrative License Requirements

An applicant for a Standard Administrative License must:

(1) Submit an application in the form and manner required by the commission;

(2) Provide verification of three years of successful administrative experience in Oregon schools while holding a Basic Administrative License or a Five-Year Administrative License. Experience of superintendents may only be verified by the district's deputy clerk, personnel officer, or board chairperson;

(3) Provide either official transcripts together with verification of completion of an approved Standard Administrative License program, or official transcripts verifying completion of administrator preparation in addition to the master's degree as required by OAR 584-046-0021 or 584-046-0024 at an approved teacher education institution in another state;

(a) Applicants who have completed a master's degree plus at least 12 quarter hours of graduate preparation beyond requirements for the initial administrative license through an approved institution in another state prior to their first application in Oregon are evaluated for the standard license by TSPC. These applicants are advised by TSPC of the remaining requirements for the Standard Administrative License when the basic license is issued. A Preparation for Teaching Report, Form C-2, is not required for issuance of the Standard Administrative License for these applicants.

(b) An applicant bears the burden of proving that he or she has met licensure requirements. The applicant must present evidence that the courses taken covered the required subject matter. In some cases, a transcript showing the course title will suffice; where the course title is not descriptive of course content, the applicant should present a syllabus or other description of course content in addition to the transcript.

(4) Present evidence of knowledge of the laws prohibiting discrimination, if not previously verified;

(5) Submit the fee and late fees if appropriate as indicated in OAR 584-036-0055;

(6) Provide verification of recent educational experience; and

(7) Verify completion of the academic preparation for one of the standard endorsements outlined in OAR 584-046-0021 or 584-046-0024.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 3-1992, f. & cert. ef. 7-31-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 5-2008, f. & cert. ef. 6-13-08

584-046-0021
Standard Administrator

(1) Eighteen quarter hours of graduate preparation, in addition to requirements for the basic administrator endorsement specified in OAR 584-046-0016, designed to strengthen the applicant's background in school administration, to include:

(a) The teaching-learning process;

(b) Curriculum development and implementation;

(c) School-community relationships;

(d) Research, evaluation, and goal setting; and

(e) Communications.

(2) All of the basic and standard administrator endorsement program must be completed in addition to earning the master's degree.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 2-1986, f. 4-18-86, cert. ef. 1-15-88; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 3-1992, f. & cert. ef. 7-31-92; TSPC 5-2008, f. & cert. ef. 6-13-08

584-065-0120
Knowledge, Skills and Abilities for Early Childhood Endorsement

(1) In addition to passing the required Commission-approved multiple subjects examination required for early childhood education authorization, candidates must complete the required practicum experience with students in one or more age groups or grades between age three and grade four.

(2) Teachers who hold an Initial, Initial I or Initial II or Continuing Teaching License with an elementary authorization may add the early childhood authorization level only upon enrollment in an early childhood authorization program approved by TSPC. [See, OAR 584-060-0051.]

(3) In order to promote child development and learning, the candidate must:

(a) Know and understand young children's characteristics and needs;

(b) Know and understand the multiple influences on development and learning; and

(c) Use developmental knowledge to create healthy, respectful, supportive and challenging learning environments.

(4) In order to build family and community relationships, the candidate must:

(a) Know about and understand family and community characteristics;

(b) Support and empower families and communities through respectful, reciprocal relationships; and

(c) Involve families and communities in their children's development and learning.

(5) In order to document and assess the learning of young children, the candidate will:

(a) Understand the goals, benefits and uses of assessment;

(b) Know about and use observation, documentation, and other appropriate assessment tools and approaches to inform instruction;

(c) Understand and practice appropriate assessment;

(d) Develop partnerships with families and other professionals to assess children's strengths and needs; and

(e) Understand and practice appropriate assessment for all children including culturally and linguistically diverse children as well as children with exceptionalities.

(6) In order to demonstrate teaching and learning, the candidate will:

(a) Connect with children and families to create positive learning environments; and

(b) Use developmentally effective approaches:

(A) Foster oral language and communication;

(B) Draw from continuum of teaching strategies;

(C) Make the most of the environment and routines;

(D) Capitalize on incidental teaching;

(E) Focus on children's characteristics, needs, and interests;

(F) Link children's language and culture to the early childhood program;

(G) Teach through social interactions;

(H) Create support for play;

(I) Address children's challenging behaviors;

(J) Use integrative approaches to curriculum; and

(c) Demonstrate an understanding of content knowledge in early education, the candidate will create a classroom environment that encompasses the following core content objectives:

(A) In language and literacy, candidates will develop curriculum so that students will:

(i) Explore their environments and develop the conceptual, experiential, and language foundations for learning to read and write;

(ii) Develop their ability to converse at length and in depth on a topic in various settings (one-on-one with adults and peers, in small groups, etc.);

(iii) Develop vocabulary that reflects their growing knowledge of the world around them;

(iv) Use language, reading and writing to strengthen their own cultural identify as well as to participate in the shared identity of the school environment;

(v) Associate reading and writing with pleasure and enjoyment as well as with skill development;

(vi) Use a range of strategies to derive meaning from stories and texts;

(vii) Use language, reading, and writing for various purposes;

(viii) Use a variety of print and non-print resources;

(ix) Develop basic concepts of print and understanding of sounds, letters, and letter sound relationships; and

(B) In the Arts: music, creative movement, dance, drama, and art, candidates will develop curriculum so that students will:

(i) Interact musically with others;

(ii) Express and interpret understandings of their world through structured and informal musical play;

(iii) Sing, play, and create music;

(iv) Respond to expressive characteristics of music-rhythm, melody, form-through speaking, singing, moving, and playing simple instruments;

(v) Use music to express emotions, conflicts, and needs;

(vi) Move expressively to music of various tempos, meters, modes, genres, and cultures to express what they feel and hear;

(vii) Understand and apply artistic media, techniques, and processes;

(viii) Make connections between visual arts and other disciplines; and

(C) In Mathematics, candidates will develop curriculum in alignment with the National Council of Teachers of Mathematics (NCTM) curriculum student or K-12 grade, recognizing the quantitative dimensions of children's learning:

(i) Mathematics as problem solving;

(ii) Mathematics as communication;

(iii) Mathematics as reasoning;

(iv) Mathematical connections;

(v) Estimation;

(vi) Number sense and numeration;

(vii) Concepts of whole number operations;

(viii) Whole number computation;

(ix) Geometry and spatial sense;

(x) Measurement;

(xi) Statistics and probability;

(xii) Fractions and decimals;

(xiii) Patterns and relationships; and

(D) In physical activity and Physical Education, candidates will develop curriculum so that students will:

(i) Have varied, repeated experiences with functional movement and manipulation;

(ii) Demonstrate progress toward mature forms of selected physical skills;

(iii) Try new movement activities and skills;

(iv) Use feedback to improve performance;

(v) Experience and express pleasure from participation in physical activity;

(vi) Apply rules, procedures, and safe practices;

(vii) Gain competence to provide increased enjoyment in movement; and

(E) In Science, candidates will develop curriculum so that students will:

(i) Explore materials, objects and events by acting upon them and noticing what happens;

(ii) Make careful observations of objects, organisms, and events using all their senses;

(iii) Describe, compare, sort, classify, and order in terms of observable characteristics;

(iv) Use a variety of simple tools to extend their observations;

(v) Engage in simple investigations including making predictions, gathering and interpreting data, recognizing simple patterns, and drawing conclusions;

(vi) Record observations, explanations, and ideas through multiple forms of representation;

(vii) Work collaboratively with others, share and discuss ideas, and listen to new perspectives; and

(F) In Social Studies, candidates will develop curriculum so that students will:

(i) Geography:

(I) Make and use maps to locate themselves in space

(II) Observe the physical characteristics of the places in which they live and identify landforms, bodies of water, climate, soils, natural vegetation and animal life of that place; and

(ii) History:

(I) Use the methods of the historian, identifying questions, locating and analyzing information, and reaching conclusions;

(II) Record and discuss the changes that occur in their lives, recalling their immediate past; and

(iii) Economics:

(I) Develop awareness of the difference between wants and needs;

(II) Develop interest in the economic system, understanding the contributions of those who produce goods and services; and

(iv) Social relations/civics:

(I) Become a participating member of the group, giving up some individuality for the greater good;

(II) Recognizing similarities among people of many cultures;

(III) Respecting others, including those who differ in gender, ethnicity, ability or ideas;

(IV) Learn the principles of democracy, working cooperatively with others, sharing and voting as they solve problems; and

(d) In order to build meaningful curriculum, the candidate will:

(A) Know, understand, and use positive relationships and supportive interactions;

(B) Know, understand, and use effective approaches, strategies, and tools for early education;

(C) Know and understand the importance, central concepts, inquiry tools, curriculum integration, and structures of content areas or academic disciplines; and

(D) Know and use differentiated instructional strategies to promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics.

(7) In demonstrating professionalism, the candidate will:

(a) Identify and involve oneself with the early childhood field;

(b) Know about and uphold ethical standard and other professional guidelines (see National Association for the Education for Young Children (NAEYC) Code of Ethical Conduct);

(c) Engage in continuous, collaborative learning to inform practice;

(d) Integrate knowledgeable, reflective, and critical perspectives on early education; and

(e) Engage in informed advocacy for children and the profession.

(8) Valid for any teaching assignment, except specialization requiring endorsement under OAR 584-060-0071, at or below grade four.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.165
Hist.: TSPC 5-2008, f. & cert. ef. 6-13-08

584-070-0012
Initial I School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial I School Counselor License for three years.

(2) The Initial I School Counselor License is valid as designated for regular counseling at early childhood and elementary grade levels; at elementary and middle-level grade levels; or at middle and high school grade levels, or at all four levels.

(a) The license is also valid for substitute counseling at any level; and

(b) The license is also valid for substitute teaching at any level in any specialty.

(3) To be eligible for an Initial I School Counselor License, an applicant must satisfy all of the following general preparation requirements:

(a) A teaching experience satisfied in one of the following ways:

(A) Two academic years of experience as a full-time licensed teacher in a public education setting or in a regionally accredited private school in any state or other U.S. jurisdiction; or

(B) Completion of a practicum approved by the commission in teaching at any grade authorization level, as part of an initial graduate program or separately;

(b) A master's or higher degree in counseling, education, or related behavioral sciences from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with any equally accredited bachelor's degree;

(c) Completion in Oregon or another U.S. jurisdiction, as part of the master's degree or separately, of an initial graduate program in school counseling at an institution approved for counselor education by the commission;

(d) A passing score as currently specified by the commission on a test of professional knowledge for school counselors, or five years of experience counseling full time on a nonprovisional license valid for the assignment in a public school or regionally accredited private school in any U.S. jurisdiction before holding any Oregon license;

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See OAR 584-036-0080 and 584-036-0082 for information related to Basic Skills Tests.)

(f) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission;

(g) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application; and (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(h) Complete a recent experience during the three-year period immediately preceding application. (See OAR 584-005-0005 for definition of "Recent Experience.")

(4) The Initial I School Counselor License may be renewed two times for three years upon showing progress toward completion of the renewal

requirements as described in OAR 584-070-0014 during the life of the Initial I School Counselor License under the following conditions:

(a) The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment; and

(b) The educator must qualify for an Initial II School Counselor License upon expiration of ten years following the date the first Initial School Counselor License was issued if the license was issued prior to July 1, 2005. All School Counselor Licenses issued after June 30, 2005 must qualify for an Initial II School Counselor License upon the expiration of nine years following the date the first Initial School Counselor License was issued; and

(c) If the Initial I School Counselor license was issued on the basis of an out-of-state nonprovisional license rather than completion of an Oregon-approved program; the educator must have completed any incomplete requirements in subsection (3) above;

(d) If the educator is eligible for application of OAR 584-048-0062, Special Provisions for Renewal of Personnel Service Licenses.

(5) The Executive Director may grant an extension to the Initial I School Counselor License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the school counselor was unable to complete the requirements for the Initial II School Counselor License during the life of the Initial I School Counselor License.

(6) School counselor licenses are authorized for grade levels that are the same as those used to authorize teachers (see OAR 584-060-0051 and 584-060-0052), except that the levels are authorized in pairs: early childhood and elementary (ECE/ELE); or middle-level and high school (ML/HS).

(a) Early childhood and elementary authorization is valid up through grade eight in any school.

(b) Middle level and high school authorization is valid in grades five through twelve in any school.

(c) The Initial I School Counselor License is authorized for either two or four grade authorization levels, i.e., one or both pairs, on the basis of professional education, experience, previous licensure, and specialized academic course work verified by one of the following:

(A) Evidence verified by an Oregon-approved School Counseling Program; or

(B) An out-of-state non-provisional School Counselor License valid for all grade levels;

(7) On an Initial I School Counselor License authorized for only two levels, the remaining pair of levels can be added prior to attainment of the Initial II School Counselor or the Continuing School Counselor License. The remaining levels will be added upon acquisition of practical experience in one of two ways:

(a) A practicum of four (4) semester hours or six (6) quarter hours at either or both of the paired new grade authorization levels, entailing a minimum of 200 clock hours, in an institution approved to prepare for those grade authorization levels; or

(b) One academic year at either or both of the paired new grade authorization levels as permitted in subsection (8) below.

(8) A counselor authorized for only one of the paired grade authorization levels may counsel in the remaining unauthorized grade levels for a period of not more than three years while pursuing authorization at the other paired authorization grade levels upon request for a conditional assignment permit pursuant to OAR 584-036-0081.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2008, f. & cert. ef. 6-13-08

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Veterinary Medical Examining Board
Chapter 875

Rule Caption: Corrects a filing error; makes rule consistent with reference citation (OAR 875-005-0005).
Adm. Order No.: VMEB 6-2008
Filed with Sec. of State: 5-21-2008
Certified to be Effective: 5-21-08
Notice Publication Date: 11-1-2007
Rules Amended: 875-005-0005
Subject: 875-005-0005 this is to be a permanent amendment, correcting a filing error that inadvertently omitted text. Text should read; (7) "Client": An entity, person, group or corporation that has entered into an agreement with a veterinarian for the purpose of obtaining veterinary medical services.
Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-005-0005
Definitions

(1) "Agency": Any animal control department, humane society, or facility which contracts with a public agency or arranges to provide animal sheltering services and is certified by the Euthanasia Task Force and registered by the State Board of Pharmacy.

(2) "Board": The Oregon State Veterinary Medical Examining Board.

(3) "Board of Pharmacy": The Oregon State Board of Pharmacy.

(4) "Certified Euthanasia Technician or "CET". A person who is recognized by an agency as a paid or volunteer staff member and is instructed and certified by the Euthanasia Task Force pursuant to ORS 475.190(4). Any person who was trained prior to October 15, 1983 in euthanasia methods, in the course provided by Multnomah County Animal Control and the Oregon Humane Society, and who has been subsequently certified by the Euthanasia Task Force.

(5) "Comprehensive": Pertaining to all animal species.

(6) "Conviction of Cruelty to Animals": for purposes of ORS 686.130(11) is defined to include but not limited to animal abuse in the first or second degree, aggravated animal abuse in the first degree, and animal neglect in the first degree.

(7) "Client": An entity, person, group or corporation that has entered into an agreement with a veterinarian for the purpose of obtaining veterinary medical services.

(8) "Designated Agent": A CET who is responsible for the withdrawal and return of sodium pentobarbital from the drug storage cabinet.

(9) "Good Standing and Repute": As used in ORS 686.045(1), means:

(a) A university accredited by the American Veterinary Medical Association (AVMA); or

(b) A foreign school listed by the AVMA whose graduates are eligible to apply for a certificate through the Educational Commission for Foreign Veterinary Graduates (ECFVG) committee of the AVMA, or other programs approved by the Board.

(10) "Herd or Flock Animal": Animals managed as a group only for economic gain including but not limited to breeding, sale, show, food production, or racing.

(11) "Lethal Drug": Sodium pentobarbital or any other drug approved by the Task Force, the Board and the Board of Pharmacy, and used for the purpose of humanely euthanizing injured, sick, homeless or unwanted domestic pets and other animals.

(12) "Mobile Clinic": A vehicle, including but not limited to a camper, motor home, trailer, or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(13) Surgery Procedure:

(a) "Aseptic Surgery": Aseptic surgical technique exists when everything that comes in contact with the surgical field is sterile and precautions are taken to ensure sterility during the procedure.

(b) "Antiseptic Surgery": Antiseptic surgical technique exists when care is taken to avoid bacterial contamination. (c) Any injection or implant of a small permanent identification device is considered surgery.

(14) "Supervision" means that each act shall be performed by any employee or volunteer in the practice only after receiving specific directions from a licensed veterinarian.

(a) "Direct" supervision under this provision means both the certified veterinary technician and the licensed veterinarian are on the premises at the same time;

(b) "Immediate" supervision under this provision means that the supervising veterinarian is in the immediate vicinity of where the work is being performed and is actively engaged in supervising this work throughout the entire period it is being performed;

(15) "Task Force": The Euthanasia Task Force appointed by the Board pursuant to ORS 686.510 consisting of no fewer than five members, and who are either certified euthanasia technicians or licensed veterinarians.

(16) "Veterinary Client Patient Relationship (VCPR)": Except where the patient is a wild or feral animal or its owner is unknown; a VCPR shall exist when the following conditions exist: The veterinarian must have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has seen the animal within the last year and is personally acquainted with the care of the animal by virtue of a physical examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept.

(17) "Veterinary Medical Facility": Any premise, unit, structure or vehicle where any animal is received and/or confined and veterinary medicine is practiced, except when used for the practice of veterinary medicine pursuant to an exemption under ORS 686.040.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 475.190, 609.405, 686.130, 686.255 & 686.510
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 1-2008, f. & cert. ef. 2-11-08; VMEB 6-2008, f. & cert. ef. 5-21-08

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Water Resources Department
Chapter 690

Rule Caption: Administrative Rules implementing a planning studies grant program required under SB 1069 (Chapter 13, 2008 Laws).
Adm. Order No.: WRD 1-2008
Filed with Sec. of State: 6-4-2008
Certified to be Effective: 6-6-08
Notice Publication Date: 5-1-2008
Rules Adopted: 690-600-0000, 690-600-0010, 690-600-0020, 690-600-0030, 690-600-0040, 690-600-0050, 690-600-0060, 690-600-0070
Subject: The Water Resource Commission (Commission) adopted rules necessary to administer the grant program established under Senate Bill 1069 (Chapter 13, 2008 Laws). SB 1069 directs the Oregon Water Resources Department (Department) to establish a grant program to pay the qualifying costs of planning studies performed to evaluate the feasibility of developing a water conservation, reuse or storage project. In addition, SB 1059 directs the Commission to adopt rules necessary to administer the grant program.

The adopted rules incorporate provisions required under SB 1069 and provide procedures and requirements for the administration of grants from the initial application to final completion of the planning study. In addition, the adopted rules establish an administrative process designed to bring staff recommendations for grant funding before the Commission for final consideration and approval.
Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-600-0000
Purpose

These rules establish procedures for the Oregon Water Resources Department in accepting applications and considering proposals for funding under the provisions of Senate Bill 1069 (Chapter 13, 2008 Laws). The Water Conservation, Reuse, and Storage Grant Program includes funding for project planning studies performed to evaluate the feasibility of developing a water conservation, reuse, or storage project.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL Ch. 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

690-600-0010
Definitions

The following definitions apply to this division of the rules:

(1) "Department" means the Oregon Water Resources Department.

(2) "Director" means the Director of the Oregon Water Resources Department.

(3) "Funding" means a grant or payment for direct services, including but not limited to technical planning services, available through the Program.

(4) "Grant Agreement" means the legally binding contract between the Department and the funding recipient. It consists of the conditions specified in these rules, the notice of funding award, special conditions to the grant agreement, a certification to comply with applicable state and federal regulations, the project planning study budget and the approved application for funding the project planning study.

(5) "Grantee" means a local government as defined in ORS 174.116, an Indian tribe as defined in ORS 391.802, or a person as defined in ORS 536.007, that is a recipient of funding from the Program.

(6) "Partner" means a non-governmental or governmental person or entity that has committed funding, expertise, materials, labor, or other assistance to a proposed project planning study.

(7) "Program" means the Water Conservation, Reuse, and Storage Grant Program.

(8) "Project Planning Study" means research and planning performed to evaluate the feasibility of developing a water conservation, reuse, or storage project.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL Ch. 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

690-600-0020
Application Requirements

(1) Funding is limited to a Grantee as defined in 690-600-0010(5).

(2) Applications for funding may not exceed $500,000 per project.

(3) For a project planning study to be considered for review and funding, an applicant must submit a complete application as determined by the Department and the project planning study must be eligible for funding under 690-600-0050.

(4) All applicants for funding shall supply the following information in their application:

(a) Names, mailing addresses, email addresses (if available), and fax and telephone numbers of the applicant contact person(s) and the fiscal officer(s);

(b) Partner(s) name and address, if applicable;

(c) Information required by the Department regarding the water conservation, reuse or storage project associated with the project planning study.

(d) For a project planning study associated with an above ground storage project, information as to whether and to what extent the project includes provisions for using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life or other ecological values.

(e) For a project planning study that is not associated with an above ground storage project, information as to whether the project has been identified by the Department in a statewide water assessment and inventory.

(f) For a project planning study that is associated with a proposed storage project that would impound surface water on a perennial stream, divert water from a stream that supports sensitive, threatened or endangered fish or divert more than 500 acre-feet of surface water annually, the proposed project planning study must contain the following elements:

(A) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of the storage project on those flows;

(B) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;

(C) Analyses of environmental harm or impacts from the proposed storage project

(D) Evaluation of the need for and feasibility of using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values, and

(E) For a proposed storage project that is for municipal use, analysis of local and regional water demand and the proposed storage project's relationship to existing and planned water supply projects.

(g) Estimated line item budget for the project planning study including the sources and amounts of match funding and the amount of funding requested from the Department. Administrative costs may not exceed 10% of the total funding requested from the Department.

(h) A project planning study schedule including identification of specific project planning study elements for which funding will be used and the project planning study beginning and completion date; and

(i) Any other information requested by the Department that is necessary to evaluate the application for funding based on evaluation criteria developed by the Department.

(5) An applicant must demonstrate that at least 50% match is being sought, on a form provided by the Department, based on the total funding request. Match may include:

(a) Associated and documented expenditures for the project planning study from non-Program sources incurred prior to program funding and approved by the Department for match purposes.

(b) Secured funding commitments from other sources;

(c) Pending commitments of funding from other sources. In such instances, Department funding will not be released prior to secured commitment of the funds from other sources. Pending commitments of the funding must be secured within 12 months from the date of the award; or

(d) The value of in-kind labor, equipment rental and materials essential to the project planning study.

(6) An application must be submitted on a form provided by the Department. An explanation must accompany the application if any of the information required in section (4) of this rule cannot be provided.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL Ch. 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

690-600-0030
Application Process

(1) Depending upon the availability of Program funds, the Department will periodically, but not less than annually, announce deadlines for submitting applications for funding.

(2) The Department may use an application review team consisting of persons with water supply and planning knowledge and interdisciplinary expertise appointed by the Director to review applications and make funding recommendations to the Department.

(3) In its evaluation of applications associated with above ground storage projects, the Department will give priority to applications associated with above ground storage projects that include provisions for using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life or other ecological values.

(4) In its evaluation of applications that are not associated with above ground storage projects, the Department will give priority to applications associated with projects that are identified by the Department in a statewide water assessment and inventory.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL Ch. 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

690-600-0040
Grant Agreement and Conditions

(1) The Director or designee will establish grant agreement conditions for each grant. Grantees shall comply with all grant agreement conditions.

(2) The Department will only enter into new agreements or amendments to existing agreements with prior grantees of the Program if all reporting obligations under existing or earlier grant agreements have been met.

(3) The grantee must:

(a) Submit a quarterly report to the Department on a form provided by the Department that provides information regarding the expenditure of program and non-program funds, progress toward completion of the project planning study, compliance with special conditions and requirements in the Grant Agreement and any other information the Department deems appropriate.

(b) Comply with all federal, state and local laws and ordinances applicable to the work to be done under the grant agreement.

(c) Account for funds distributed by the Department, using project planning study expense forms provided by the Department.

(d) Obtain all permits and licenses from local, state or federal agencies or governing bodies necessary to fulfill the grant agreement and provide a copy to the Department.

(4) It is not the intent of the program to finance equipment purchases. Any equipment purchase authorized by the Department may be subject to additional conditions to be included in the grant agreement.

(5) Upon notice by the Department to the grantee in writing, the Director may terminate funding for project planning studies not complying with the grant agreement conditions. The money allocated to the project planning study but not used will be available for reallocation by the Department.

(6) The Grant Agreement will contain a condition that all project planning study reports that the Department determines to be final and complete will be made available to the public. The Department may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the project planning study. Such conditions may include but are not limited to:

(a) Special reporting requirements that it deems appropriate.

(b) A commitment to supply future reports on the project planning study as required; and

(c) A commitment to provide a report of any future actions taken as a result of the project planning study.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL Ch. 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

690-600-0050
Eligible Project Planning Studies

(1) Project planning studies eligible for funding under the Program may include:

(a) Analyses of hydrological refill capacity;

(b) Water needs analyses;

(c) Refined hydrological analyses;

(d) Engineering and financial feasibility studies;

(e) Geologic analyses;

(f) Water exchange studies;

(g) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of a proposed water conservation, reuse or storage project on those flows;

(h) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;

(i) Analyses of environmental harm or impacts from a proposed water conservation, reuse or storage project;

(j) Analyses of public benefits accruing from a proposed water conservation, reuse or storage project;

(k) Fiscal analyses of a proposed water conservation, reuse or storage project, including estimated project costs, financing for the project and projected financial returns from the project;

(l) Hydrological analyses of a proposed water conservation, reuse or storage project, including the anticipated effects of climate change on hydrological refill capacity; and

(m) Analyses of potential water quality impacts of the project.

(2) If a planning study concerns a proposed storage project that would impound surface water on a perennial stream or divert water from a stream that supports sensitive, threatened or endangered fish or divert more than 500 acre-feet of surface water annually; grant funding may be provided only if the study contains:

(a) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of the storage project on those flows;

(b) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;

(c) Analyses of environmental harm or impacts from the proposed storage project;

(d) Evaluation of the need for and feasibility of using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values; and

(e) For a proposed storage project that is for municipal use, analysis of local and regional water demand and the proposed storage projects relationship to existing and planned water supply projects.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL Ch. 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

690-600-0060
Public Notice and Comment

(1) The Department will post a summary of an application for Program funding within 10 days of a determination by the Department that the application is complete and meets the requirements of 690-600-0020.

(2) Prior to the award of funding for a project planning study, the Department will provide public notice of applications for Program funding and associated application review team recommendations. After public notice, the Department will provide a minimum of 30 days for submission of written comments.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL Ch. 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

690-600-0070
Distribution of Funds

(1) The Department will not reimburse the Grantee for any expenditure incurred prior to the signing of the grant agreement by all parties to the agreement.

(2) The Director may withhold payments to a Grantee when in a situation where there are significant and persistent difficulties with satisfying Department requirements.

(3) Prior to disbursement of Department funds, the Grantee must provide proof that is satisfactory to the Department that the match requirement of at least 50% of the funding from a source other than the Program has been secured.

(4) Funds shall not be disbursed until the Department receives satisfactory evidence that necessary permits and licenses have been granted and documents required by the Department have been submitted.

Stat. Auth.: ORS 536.027
Stats. Implemented: 2008 OL, Ch, 13
Hist.: WRD 1-2008, f. 6-4-08, cert. ef. 6-6-08

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137-055-4620	1-2-2008	Amend	2-1-2008
137-060-0100	1-18-2008	Amend	3-1-2008
137-060-0110	1-18-2008	Amend	3-1-2008
137-060-0130	1-18-2008	Amend	3-1-2008
137-060-0140	1-18-2008	Amend	3-1-2008
137-060-0150	1-18-2008	Amend	3-1-2008
137-060-0150	7-24-2008	Amend	6-1-2008
137-060-0160	1-18-2008	Amend	3-1-2008
137-060-0160	7-24-2008	Amend	6-1-2008
137-060-0200	1-18-2008	Amend	3-1-2008
137-060-0210	1-18-2008	Amend	3-1-2008
137-060-0230	1-18-2008	Amend	3-1-2008
137-060-0240	1-18-2008	Amend	3-1-2008
137-060-0250	1-18-2008	Amend	3-1-2008
137-060-0260	1-18-2008	Amend	3-1-2008
137-060-0300	1-18-2008	Amend	3-1-2008
137-060-0310	1-18-2008	Amend	3-1-2008
137-060-0330	1-18-2008	Amend	3-1-2008
137-060-0340	1-18-2008	Amend	3-1-2008
137-060-0350	1-18-2008	Amend	3-1-2008
137-060-0350	7-24-2008	Amend	6-1-2008
137-060-0360	1-18-2008	Amend	3-1-2008
137-060-0360	7-24-2008	Amend	6-1-2008
137-060-0400	1-18-2008	Amend	3-1-2008
137-060-0410	1-18-2008	Amend	3-1-2008
137-060-0430	1-18-2008	Amend	3-1-2008
137-060-0440	1-18-2008	Amend	3-1-2008
137-060-0450	1-18-2008	Amend	3-1-2008
137-079-0170	4-1-2008	Amend	5-1-2008
137-079-0200	4-1-2008	Amend	5-1-2008
137-084-0001	12-11-2007	Amend	1-1-2008
137-084-0005	12-11-2007	Amend	1-1-2008
137-084-0010	12-11-2007	Amend	1-1-2008

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141-085-0005	1-1-2008	Amend	1-1-2008
141-085-0006	1-1-2008	Amend	1-1-2008
141-085-0010	1-1-2008	Amend	1-1-2008
141-085-0015	1-1-2008	Amend	1-1-2008
141-085-0018	1-1-2008	Amend	1-1-2008
141-085-0020	1-1-2008	Amend	1-1-2008
141-085-0021	1-1-2008	Repeal	1-1-2008
141-085-0022	1-1-2008	Amend	1-1-2008
141-085-0023	1-1-2008	Amend	1-1-2008
141-085-0025	1-1-2008	Amend	1-1-2008
141-085-0028	1-1-2008	Amend	1-1-2008
141-085-0029	1-1-2008	Amend	1-1-2008
141-085-0034	1-1-2008	Amend	1-1-2008
141-085-0036	1-1-2008	Amend	1-1-2008
141-085-0064	1-1-2008	Amend	1-1-2008
141-085-0066	1-1-2008	Amend	1-1-2008
141-085-0068	1-1-2008	Adopt	1-1-2008
141-085-0070	1-1-2008	Amend	1-1-2008
141-085-0075	1-1-2008	Amend	1-1-2008
141-085-0079	1-1-2008	Amend	1-1-2008
141-085-0085	1-1-2008	Amend	1-1-2008
141-085-0090	1-1-2008	Amend	1-1-2008
141-085-0095	1-1-2008	Amend	1-1-2008
141-085-0096	1-1-2008	Amend	1-1-2008
141-085-0115	1-1-2008	Amend	1-1-2008
141-085-0121	1-1-2008	Amend	1-1-2008
141-085-0126	1-1-2008	Amend	1-1-2008
141-085-0131	1-1-2008	Amend	1-1-2008
141-085-0136	1-1-2008	Amend	1-1-2008
141-085-0141	1-1-2008	Amend	1-1-2008
141-085-0146	1-1-2008	Amend	1-1-2008
141-085-0156	1-1-2008	Amend	1-1-2008
141-085-0161	1-1-2008	Amend	1-1-2008
141-085-0166	1-1-2008	Amend	1-1-2008
141-085-0171	1-1-2008	Amend	1-1-2008
141-085-0176	1-1-2008	Amend	1-1-2008
141-085-0256	1-1-2008	Amend	1-1-2008
141-085-0257	1-1-2008	Amend	1-1-2008
141-085-0421	1-1-2008	Amend	1-1-2008
141-085-0425	1-1-2008	Amend	1-1-2008
141-085-0430	1-1-2008	Amend	1-1-2008
141-089-0100	1-1-2008	Amend	1-1-2008
141-089-0105	1-1-2008	Amend	1-1-2008
141-089-0110	1-1-2008	Amend	1-1-2008
141-089-0115	1-1-2008	Amend	1-1-2008
141-089-0120	1-1-2008	Amend	1-1-2008
141-089-0135	1-1-2008	Amend	1-1-2008
141-089-0140	1-1-2008	Amend	1-1-2008
141-089-0150	1-1-2008	Amend	1-1-2008
141-089-0155	1-1-2008	Amend	1-1-2008
141-089-0157	1-1-2008	Adopt	1-1-2008
141-089-0170	1-1-2008	Amend	1-1-2008
141-089-0175	1-1-2008	Amend	1-1-2008
141-089-0180	1-1-2008	Amend	1-1-2008
141-089-0185	1-1-2008	Amend	1-1-2008
141-089-0190	1-1-2008	Amend	1-1-2008
141-089-0192	1-1-2008	Adopt	1-1-2008
141-089-0205	1-1-2008	Amend	1-1-2008
141-089-0215	1-1-2008	Amend	1-1-2008
141-089-0225	1-1-2008	Amend	1-1-2008
141-089-0230	1-1-2008	Amend	1-1-2008
141-089-0245	1-1-2008	Amend	1-1-2008
141-089-0260	1-1-2008	Amend	1-1-2008
141-089-0265	1-1-2008	Amend	1-1-2008
141-089-0280	1-1-2008	Amend	1-1-2008
141-089-0285	1-1-2008	Amend	1-1-2008
141-089-0290	1-1-2008	Amend	1-1-2008
141-089-0295	1-1-2008	Amend	1-1-2008
141-089-0300	1-1-2008	Amend	1-1-2008
141-089-0302	1-1-2008	Adopt	1-1-2008
141-089-0350	5-1-2008	Adopt	5-1-2008
141-089-0355	5-1-2008	Adopt	5-1-2008
141-089-0360	5-1-2008	Adopt	5-1-2008
141-089-0365	5-1-2008	Adopt	5-1-2008
141-089-0370	5-1-2008	Adopt	5-1-2008
141-089-0375	5-1-2008	Adopt	5-1-2008
141-089-0380	5-1-2008	Adopt	5-1-2008
141-089-0385	5-1-2008	Adopt	5-1-2008
141-089-0390	5-1-2008	Adopt	5-1-2008
141-089-0400	1-1-2008	Amend	1-1-2008
141-089-0405	1-1-2008	Amend	1-1-2008
141-089-0415	1-1-2008	Amend	1-1-2008
141-089-0420	1-1-2008	Amend	1-1-2008
141-089-0423	1-1-2008	Adopt	1-1-2008
141-089-0500	1-1-2008	Amend	1-1-2008
141-089-0505	1-1-2008	Amend	1-1-2008
141-089-0515	1-1-2008	Amend	1-1-2008
141-089-0520	1-1-2008	Amend	1-1-2008
141-089-0550	1-1-2008	Amend	1-1-2008
141-089-0555	1-1-2008	Amend	1-1-2008
141-089-0560	1-1-2008	Amend	1-1-2008
141-089-0565	1-1-2008	Amend	1-1-2008
141-089-0570	1-1-2008	Amend	1-1-2008
141-089-0572	1-1-2008	Adopt	1-1-2008
141-089-0585	1-1-2008	Amend	1-1-2008
141-089-0595	1-1-2008	Amend	1-1-2008
141-089-0600	1-1-2008	Amend	1-1-2008
141-089-0605	1-1-2008	Amend	1-1-2008
141-089-0607	1-1-2008	Adopt	1-1-2008
141-090-0005	1-1-2008	Amend	1-1-2008
141-090-0010	1-1-2008	Amend	1-1-2008
141-090-0015	1-1-2008	Amend	1-1-2008
141-090-0020	1-1-2008	Amend	1-1-2008
141-090-0025	1-1-2008	Amend	1-1-2008
141-090-0030	1-1-2008	Amend	1-1-2008
141-090-0032	1-1-2008	Adopt	1-1-2008
141-090-0035	1-1-2008	Amend	1-1-2008
141-090-0040	1-1-2008	Amend	1-1-2008
141-090-0045	1-1-2008	Amend	1-1-2008
141-090-0050	1-1-2008	Amend	1-1-2008

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141-102-0020	1-1-2008	Amend	1-1-2008
141-102-0030	1-1-2008	Amend	1-1-2008
141-102-0045	1-1-2008	Repeal	1-1-2008
142-010-0010	4-14-2008	Amend	5-1-2008
142-010-0020	4-14-2008	Amend	5-1-2008
142-010-0045	4-14-2008	Amend	5-1-2008
142-015-0000	4-14-2008	Adopt	5-1-2008
142-015-0010	4-14-2008	Adopt	5-1-2008
142-015-0020	4-14-2008	Adopt	5-1-2008
142-015-0030	4-14-2008	Adopt	5-1-2008
142-015-0040	4-14-2008	Adopt	5-1-2008
142-015-0050	4-14-2008	Adopt	5-1-2008
150-118.005	1-1-2008	Repeal	2-1-2008
150-118.140	5-23-2008	Adopt(T)	7-1-2008
150-18.385-(A)	1-1-2008	Amend	2-1-2008
150-293.250(2)	2-15-2008	Amend	3-1-2008
150-305.145(3)	1-1-2008	Amend	2-1-2008
150-305.220(2)	1-1-2008	Amend	2-1-2008
150-305.270(10)	1-1-2008	Amend	2-1-2008
150-305.270(4)-(A)	1-1-2008	Amend	2-1-2008
150-305.992	1-1-2008	Amend	2-1-2008
150-307.262(2)	1-1-2008	Repeal	2-1-2008
150-309.115(1)-(A)	1-1-2008	Repeal	2-1-2008
150-311.676	1-1-2008	Amend	2-1-2008
150-311.676-(B)	1-1-2008	Repeal	2-1-2008
150-311.684	1-1-2008	Amend	2-1-2008
150-311.689	1-1-2008	Amend	2-1-2008
150-311.806-(A)	1-1-2008	Amend	2-1-2008
150-314.258	1-1-2008	Adopt	2-1-2008
150-314.258	5-23-2008	Amend(T)	7-1-2008
150-314.280-(E)	1-1-2008	Amend	2-1-2008
150-314.280-(G)	1-1-2008	Amend	2-1-2008
150-314.280-(H)	1-1-2008	Amend	2-1-2008
150-314.280-(I)	1-1-2008	Amend	2-1-2008
150-314.280-(J)	1-1-2008	Amend	2-1-2008
150-314.280-(K)	1-1-2008	Amend	2-1-2008
150-314.280-(L)	1-1-2008	Amend	2-1-2008
150-314.308	1-1-2008	Adopt	2-1-2008
150-314.415.(7)	1-1-2008	Amend	2-1-2008
150-314.425-(B)	1-1-2008	Adopt	2-1-2008
150-314.615-(D)	1-1-2008	Amend	2-1-2008
150-314.615-(E)	1-1-2008	Amend	2-1-2008
150-315.262	1-1-2008	Amend	2-1-2008
150-315.354(5)	1-1-2008	Amend	2-1-2008
150-315.521	1-1-2008	Adopt	2-1-2008
150-316.127-(E)	1-1-2008	Amend	2-1-2008
150-316.127(10)	1-1-2008	Adopt	2-1-2008
150-317.010	5-5-2008	Adopt	6-1-2008
150-317.092	1-1-2008	Adopt	2-1-2008
150-317.705(3)(a)	1-1-2008	Amend	2-1-2008
150-317.705(3)(b)	1-1-2008	Amend	2-1-2008
150-321.307(4)	1-1-2008	Repeal	2-1-2008
150-321.485(4)	1-1-2008	Repeal	2-1-2008
150-323.320(1)(b)	2-4-2008	Adopt(T)	3-1-2008
151-001-0005	12-13-2007	Amend(T)	1-1-2008
151-001-0005	4-14-2008	Amend	5-1-2008
151-001-0010	12-13-2007	Amend(T)	1-1-2008
151-001-0010	4-14-2008	Amend	5-1-2008
151-001-0015	4-14-2008	Amend	5-1-2008
151-020-0045	12-13-2007	Amend(T)	1-1-2008
151-020-0045	4-14-2008	Amend	5-1-2008
160-005-0005	5-1-2008	Amend	5-1-2008
160-005-0007	5-1-2008	Adopt	5-1-2008
160-005-0010	5-1-2008	Amend	5-1-2008
160-010-0600	1-1-2008	Adopt	1-1-2008
160-010-0610	1-1-2008	Adopt	1-1-2008
160-010-0620	1-1-2008	Adopt	1-1-2008
160-010-0630	1-1-2008	Adopt	1-1-2008
160-050-0180	1-15-2008	Amend	2-1-2008
160-050-0190	1-15-2008	Amend	2-1-2008
160-050-0200	1-15-2008	Amend	2-1-2008
160-050-0210	1-15-2008	Amend	2-1-2008
160-050-0215	1-15-2008	Adopt	2-1-2008
160-050-0220	1-15-2008	Amend	2-1-2008
160-050-0230	1-15-2008	Amend	2-1-2008
160-050-0240	1-15-2008	Amend	2-1-2008
160-050-0250	1-15-2008	Amend	2-1-2008
160-050-0280	1-15-2008	Amend	2-1-2008
160-100-0200	1-15-2008	Amend	1-1-2008
160-100-0210	5-1-2008	Amend	5-1-2008
161-002-0000	5-13-2008	Amend	6-1-2008
161-003-0020	5-13-2008	Amend	6-1-2008
161-006-0175	5-13-2008	Amend	6-1-2008
161-010-0010	5-13-2008	Amend	6-1-2008
161-010-0035	5-13-2008	Amend	6-1-2008
161-010-0045	5-13-2008	Amend	6-1-2008
161-010-0055	5-13-2008	Amend	6-1-2008
161-010-0080	5-13-2008	Amend	6-1-2008
161-020-0110	5-13-2008	Amend	6-1-2008
161-025-0025	5-13-2008	Amend	6-1-2008
161-025-0030	5-13-2008	Amend	6-1-2008
161-025-0060	5-13-2008	Amend	6-1-2008
161-050-0000	5-13-2008	Amend	6-1-2008
165-002-0020	12-31-2007	Amend	2-1-2008
165-004-0005	12-31-2007	Amend	2-1-2008
165-004-0020	12-31-2007	Amend	2-1-2008
165-005-0130	12-31-2007	Amend	2-1-2008
165-007-0030	12-31-2007	Amend	2-1-2008
165-010-0005	12-31-2007	Amend	2-1-2008
165-010-0085	12-31-2007	Adopt	2-1-2008
165-010-1001	5-2-2008	Adopt(T)	6-1-2008
165-012-0005	12-31-2007	Amend	2-1-2008
165-012-1020	1-29-2008	Adopt(T)	3-1-2008
165-013-0010	12-31-2007	Amend	2-1-2008
165-013-0020	12-31-2007	Amend	2-1-2008
165-014-0005	12-31-2007	Amend	2-1-2008
165-014-0027	12-31-2007	Repeal	2-1-2008
165-014-0030	12-31-2007	Amend	2-1-2008
165-014-0031	12-31-2007	Adopt	2-1-2008
165-014-0032	12-31-2007	Adopt	2-1-2008

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165-014-0110	12-31-2007	Amend	2-1-2008
165-014-0260	12-31-2007	Amend	2-1-2008
165-014-0270	12-31-2007	Amend	2-1-2008
165-014-0275	12-31-2007	Adopt	2-1-2008
165-014-0280	12-3-2007	Adopt	1-1-2008
165-020-0005	12-31-2007	Amend	2-1-2008
165-020-0020	12-31-2007	Amend	2-1-2008
165-020-0021	12-31-2007	Adopt	2-1-2008
165-020-0035	12-31-2007	Amend	2-1-2008
165-020-0045	12-31-2007	Repeal	2-1-2008
165-020-0050	12-31-2007	Amend	2-1-2008
165-020-0055	12-31-2007	Amend	2-1-2008
165-020-2021	2-21-2008	Adopt(T)	4-1-2008
165-021-0000	12-31-2007	Repeal	2-1-2008
165-021-0005	12-31-2007	Repeal	2-1-2008
165-021-0010	12-31-2007	Repeal	2-1-2008
165-100-0000	4-1-2008	Adopt(T)	5-1-2008
165-100-0005	4-1-2008	Adopt(T)	5-1-2008
165-100-0010	4-1-2008	Adopt(T)	5-1-2008
165-100-0015	4-1-2008	Adopt(T)	5-1-2008
165-100-0020	4-1-2008	Adopt(T)	5-1-2008
165-100-0025	4-1-2008	Adopt(T)	5-1-2008
165-100-0030	4-1-2008	Adopt(T)	5-1-2008
166-150-0205	5-30-2008	Amend	7-1-2008
166-400-0010	1-30-2008	Amend	3-1-2008
166-500-0015	11-29-2007	Amend	1-1-2008
170-002-0010	3-3-2008	Adopt	4-1-2008
170-061-0200	12-27-2007	Adopt	2-1-2008
170-071-0005	11-20-2007	Amend(T)	1-1-2008
177-040-0003	6-2-2008	Amend	7-1-2008
177-040-0051	6-2-2008	Amend	7-1-2008
177-046-0110	3-31-2008	Amend	5-1-2008
177-046-0110(T)	3-31-2008	Repeal	5-1-2008
177-046-0170	3-31-2008	Amend	5-1-2008
177-046-0170(T)	3-31-2008	Repeal	5-1-2008
177-050-0002	3-31-2008	Amend	5-1-2008
177-050-0002(T)	3-31-2008	Repeal	5-1-2008
177-050-0020	3-31-2008	Amend	5-1-2008
177-050-0020(T)	3-31-2008	Repeal	5-1-2008
177-050-0024	3-31-2008	Amend	5-1-2008
177-050-0024(T)	3-31-2008	Repeal	5-1-2008
177-050-0025	3-31-2008	Amend	5-1-2008
177-050-0025(T)	3-31-2008	Repeal	5-1-2008
177-050-0027	3-31-2008	Amend	5-1-2008
177-050-0027(T)	3-31-2008	Repeal	5-1-2008
177-050-0037	3-31-2008	Amend	5-1-2008
177-050-0037(T)	3-31-2008	Repeal	5-1-2008
177-050-0070	3-31-2008	Amend	5-1-2008
177-050-0070(T)	3-31-2008	Repeal	5-1-2008
199-005-0005	3-7-2008	Adopt	4-1-2008
199-005-0010	3-7-2008	Adopt	4-1-2008
199-005-0015	3-7-2008	Adopt	4-1-2008
199-005-0020	3-7-2008	Adopt	4-1-2008
199-005-0025	3-7-2008	Adopt	4-1-2008
199-005-0030	3-7-2008	Adopt	4-1-2008
199-005-0035	3-7-2008	Adopt	4-1-2008
199-010-0068	1-2-2008	Adopt(T)	2-1-2008
199-010-0075	3-7-2008	Amend(T)	4-1-2008
199-010-0095	3-7-2008	Amend(T)	4-1-2008
199-020-0005	3-7-2008	Suspend	4-1-2008
199-020-0007	3-7-2008	Adopt(T)	4-1-2008
213-001-0010	4-12-2008	Adopt	2-1-2008
213-003-0001	1-1-2008	Amend	2-1-2008
213-017-0002	1-1-2008	Amend	2-1-2008
213-017-0003	1-1-2008	Amend	2-1-2008
213-017-0004	1-1-2008	Amend	2-1-2008
213-017-0006	1-1-2008	Amend	2-1-2008
213-017-0007	1-1-2008	Amend	2-1-2008
213-017-0008	1-1-2008	Amend	2-1-2008
213-017-0009	1-1-2008	Amend	2-1-2008
213-017-0010	1-1-2008	Amend	2-1-2008
213-018-0050	1-1-2008	Amend	2-1-2008
213-018-0068	1-1-2008	Adopt	2-1-2008
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230-001-0005	7-1-2008	Amend	7-1-2008
230-001-0010	7-1-2008	Amend	7-1-2008
230-010-0000	7-1-2008	Amend	7-1-2008
230-010-0005	7-1-2008	Amend	7-1-2008
230-010-0010	7-1-2008	Repeal	7-1-2008
230-010-0016	7-1-2008	Repeal	7-1-2008
230-010-0030	7-1-2008	Repeal	7-1-2008
230-010-0040	7-1-2008	Am. & Ren.	7-1-2008
230-010-0050	7-1-2008	Repeal	7-1-2008
230-020-0005	7-1-2008	Repeal	7-1-2008
230-020-0010	7-1-2008	Amend	7-1-2008
230-020-0020	7-1-2008	Repeal	7-1-2008
230-020-0030	7-1-2008	Amend	7-1-2008
230-020-0040	7-1-2008	Amend	7-1-2008
230-020-0050	7-1-2008	Repeal	7-1-2008
230-020-0060	7-1-2008	Amend	7-1-2008
230-020-0070	7-1-2008	Amend	7-1-2008
230-020-0080	7-1-2008	Amend	7-1-2008
230-020-0090	7-1-2008	Amend	7-1-2008
230-020-0110	7-1-2008	Amend	7-1-2008
230-020-0170	7-1-2008	Amend	7-1-2008
230-020-0190	7-1-2008	Amend	7-1-2008
230-020-0195	7-1-2008	Adopt	7-1-2008
230-020-0200	7-1-2008	Amend	7-1-2008
230-020-0210	7-1-2008	Amend	7-1-2008
230-020-0215	7-1-2008	Adopt	7-1-2008
230-020-0220	7-1-2008	Repeal	7-1-2008
230-020-0230	7-1-2008	Repeal	7-1-2008
230-020-0240	7-1-2008	Amend	7-1-2008
230-020-0250	7-1-2008	Repeal	7-1-2008
230-020-0300	7-1-2008	Amend	7-1-2008
230-020-0310	7-1-2008	Amend	7-1-2008
230-020-0320	7-1-2008	Amend	7-1-2008
230-020-0330	7-1-2008	Amend	7-1-2008
230-020-0405	7-1-2008	Amend	7-1-2008

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230-020-0440	7-1-2008	Repeal	7-1-2008
230-020-0450	7-1-2008	Amend	7-1-2008
230-020-0470	7-1-2008	Amend	7-1-2008
230-020-0480	7-1-2008	Amend	7-1-2008
230-050-0000	7-1-2008	Repeal	7-1-2008
230-050-0005	7-1-2008	Repeal	7-1-2008
230-130-0000	7-1-2008	Repeal	7-1-2008
230-130-0005	7-1-2008	Repeal	7-1-2008
230-130-0010	7-1-2008	Repeal	7-1-2008
230-130-0020	7-1-2008	Repeal	7-1-2008
230-130-0030	7-1-2008	Repeal	7-1-2008
230-130-0040	7-1-2008	Repeal	7-1-2008
230-130-0050	7-1-2008	Repeal	7-1-2008
230-130-0060	7-1-2008	Repeal	7-1-2008
230-130-0070	7-1-2008	Repeal	7-1-2008
230-130-0080	7-1-2008	Repeal	7-1-2008
230-130-0090	7-1-2008	Repeal	7-1-2008
230-130-0100	7-1-2008	Repeal	7-1-2008
230-130-0110	7-1-2008	Repeal	7-1-2008
230-130-0120	7-1-2008	Repeal	7-1-2008
230-130-0140	7-1-2008	Repeal	7-1-2008
230-130-0150	7-1-2008	Repeal	7-1-2008
230-130-0160	7-1-2008	Repeal	7-1-2008
230-130-0170	7-1-2008	Repeal	7-1-2008
230-130-0180	7-1-2008	Repeal	7-1-2008
230-130-0190	7-1-2008	Repeal	7-1-2008
230-130-0200	7-1-2008	Repeal	7-1-2008
230-130-0220	7-1-2008	Repeal	7-1-2008
230-130-0230	7-1-2008	Repeal	7-1-2008
230-140-0000	1-29-2008	Adopt(T)	3-1-2008
230-140-0000	7-1-2008	Adopt	7-1-2008
230-140-0010	1-29-2008	Adopt(T)	3-1-2008
230-140-0010(T)	7-1-2008	Repeal	7-1-2008
230-140-0020	1-29-2008	Adopt(T)	3-1-2008
230-140-0020	7-1-2008	Adopt	7-1-2008
230-140-0030	1-29-2008	Adopt(T)	3-1-2008
230-140-0030	7-1-2008	Adopt	7-1-2008
230-140-0040	1-29-2008	Adopt(T)	3-1-2008
230-140-0040	7-1-2008	Adopt	7-1-2008
250-010-0075	12-10-2007	Adopt(T)	1-1-2008
250-010-0075	5-1-2008	Adopt	5-1-2008
250-010-0075(T)	5-1-2008	Repeal	5-1-2008
250-015-0001	5-7-2008	Amend(T)	6-1-2008
250-015-0003	5-7-2008	Adopt(T)	6-1-2008
250-020-0102	4-26-2008	Amend	5-1-2008
250-020-0221	1-15-2008	Amend	2-1-2008
255-060-0011	1-11-2008	Amend	2-1-2008
255-070-0003	4-9-2008	Amend	5-1-2008
259-008-0010	1-15-2008	Amend(T)	2-1-2008
259-008-0010	4-15-2008	Amend	5-1-2008
259-008-0010(T)	1-15-2008	Suspend	2-1-2008
259-008-0010(T)	4-15-2008	Repeal	5-1-2008
259-008-0011	4-15-2008	Amend	5-1-2008
259-008-0060	1-15-2008	Amend	2-1-2008
259-009-0070	1-15-2008	Amend	2-1-2008
259-060-0010	4-15-2008	Amend	5-1-2008
259-060-0060	4-15-2008	Amend	5-1-2008
259-060-0120	4-15-2008	Amend	5-1-2008
259-060-0130	4-15-2008	Amend	5-1-2008
259-060-0135	4-15-2008	Amend	5-1-2008
259-060-0450	4-15-2008	Amend	5-1-2008
259-060-0500	4-15-2008	Amend	5-1-2008
259-061-0015	4-15-2008	Amend	5-1-2008
259-061-0040	5-15-2008	Amend(T)	6-1-2008
259-061-0090	5-15-2008	Amend(T)	6-1-2008
259-061-0230	5-15-2008	Amend(T)	6-1-2008
274-001-0005	3-25-2008	Amend	5-1-2008
274-012-0001	1-7-2008	Amend(T)	2-1-2008
274-012-0001	2-22-2008	Amend	4-1-2008
274-012-0100	1-7-2008	Amend(T)	2-1-2008
274-012-0100	2-22-2008	Amend	4-1-2008
274-012-0120	1-7-2008	Amend(T)	2-1-2008
274-012-0120	2-22-2008	Amend	4-1-2008
274-015-0005	2-22-2008	Repeal	4-1-2008
274-025-0030	2-22-2008	Amend	4-1-2008
274-030-0500	1-1-2008	Amend	2-1-2008
274-030-0500	2-4-2008	Amend	3-1-2008
274-030-0500(T)	1-1-2008	Repeal	2-1-2008
274-030-0505	1-1-2008	Amend	2-1-2008
274-030-0505(T)	1-1-2008	Repeal	2-1-2008
274-030-0506	1-1-2008	Amend	2-1-2008
274-030-0506(T)	1-1-2008	Repeal	2-1-2008
274-030-0510	1-1-2008	Amend	2-1-2008
274-030-0510(T)	1-1-2008	Repeal	2-1-2008
274-030-0515	1-1-2008	Amend	2-1-2008
274-030-0520	1-1-2008	Amend	2-1-2008
274-030-0520(T)	1-1-2008	Repeal	2-1-2008
274-030-0535	1-1-2008	Amend	2-1-2008
274-030-0545	1-1-2008	Amend	2-1-2008
274-030-0545(T)	1-1-2008	Repeal	2-1-2008
274-030-0550	1-1-2008	Amend	2-1-2008
274-030-0550(T)	1-1-2008	Repeal	2-1-2008
274-030-0555	1-1-2008	Amend	2-1-2008
274-030-0555(T)	1-1-2008	Repeal	2-1-2008
274-030-0560	1-1-2008	Amend	2-1-2008
274-030-0560(T)	1-1-2008	Repeal	2-1-2008
274-030-0565	1-1-2008	Amend	2-1-2008
274-030-0565(T)	1-1-2008	Repeal	2-1-2008
274-030-0570	1-1-2008	Amend	2-1-2008
274-030-0570(T)	1-1-2008	Repeal	2-1-2008
274-030-0575	1-1-2008	Amend	2-1-2008
274-030-0575(T)	1-1-2008	Repeal	2-1-2008
274-030-0600	1-1-2008	Amend	2-1-2008
274-030-0600(T)	1-1-2008	Repeal	2-1-2008
274-030-0602	1-1-2008	Adopt	2-1-2008
274-030-0602(T)	1-1-2008	Repeal	2-1-2008
274-030-0605	1-1-2008	Repeal	2-1-2008
274-030-0610	1-1-2008	Amend	2-1-2008
274-030-0610(T)	1-1-2008	Repeal	2-1-2008
274-030-0620	1-1-2008	Amend	2-1-2008
274-030-0620(T)	1-1-2008	Repeal	2-1-2008

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274-030-0630(T)	1-1-2008	Repeal	2-1-2008
274-030-0640	1-1-2008	Amend	2-1-2008
274-030-0640(T)	1-1-2008	Repeal	2-1-2008
274-045-0060	2-22-2008	Amend	4-1-2008
274-045-0240	2-22-2008	Amend	4-1-2008
291-011-0010	4-1-2008	Amend(T)	5-1-2008
291-026-0005	3-4-2008	Amend(T)	4-1-2008
291-026-0010	3-4-2008	Amend(T)	4-1-2008
291-026-0015	3-4-2008	Amend(T)	4-1-2008
291-026-0025	3-4-2008	Amend(T)	4-1-2008
291-026-0030	3-4-2008	Suspend	4-1-2008
291-026-0050	3-4-2008	Adopt(T)	4-1-2008
291-026-0085	3-4-2008	Suspend	4-1-2008
291-026-0095	3-4-2008	Suspend	4-1-2008
291-026-0105	3-4-2008	Amend(T)	4-1-2008
291-026-0115	3-4-2008	Amend(T)	4-1-2008
291-026-0125	3-4-2008	Amend(T)	4-1-2008
291-026-0140	3-4-2008	Adopt(T)	4-1-2008
291-041-0010	2-4-2008	Amend	3-1-2008
291-041-0015	2-4-2008	Amend	3-1-2008
291-041-0016	2-4-2008	Amend	3-1-2008
291-041-0017	2-4-2008	Adopt	3-1-2008
291-041-0020	2-4-2008	Amend	3-1-2008
291-041-0030	2-4-2008	Amend	3-1-2008
291-041-0035	2-4-2008	Amend	3-1-2008
291-041-0040	2-4-2008	Repeal	3-1-2008
291-055-0010	4-1-2008	Amend(T)	5-1-2008
291-069-0010	12-1-2007	Suspend	1-1-2008
291-069-0010	5-19-2008	Repeal	7-1-2008
291-069-0020	12-1-2007	Suspend	1-1-2008
291-069-0020	5-19-2008	Repeal	7-1-2008
291-069-0031	12-1-2007	Suspend	1-1-2008
291-069-0031	5-19-2008	Repeal	7-1-2008
291-069-0040	12-1-2007	Suspend	1-1-2008
291-069-0040	5-19-2008	Repeal	7-1-2008
291-069-0050	12-1-2007	Suspend	1-1-2008
291-069-0050	5-19-2008	Repeal	7-1-2008
291-069-0060	12-1-2007	Suspend	1-1-2008
291-069-0060	5-19-2008	Repeal	7-1-2008
291-069-0070	12-1-2007	Suspend	1-1-2008
291-069-0070	5-19-2008	Repeal	7-1-2008
291-069-0090	12-1-2007	Suspend	1-1-2008
291-069-0090	5-19-2008	Repeal	7-1-2008
291-069-0100	12-1-2007	Suspend	1-1-2008
291-069-0100	5-19-2008	Repeal	7-1-2008
291-069-0200	12-1-2007	Adopt(T)	1-1-2008
291-069-0200	5-19-2008	Adopt	7-1-2008
291-069-0210	12-1-2007	Adopt(T)	1-1-2008
291-069-0210	5-19-2008	Adopt	7-1-2008
291-069-0220	12-1-2007	Adopt(T)	1-1-2008
291-069-0220	5-19-2008	Adopt	7-1-2008
291-069-0230	12-1-2007	Adopt(T)	1-1-2008
291-069-0230	5-19-2008	Adopt	7-1-2008
291-069-0240	12-1-2007	Adopt(T)	1-1-2008
291-069-0240	5-19-2008	Adopt	7-1-2008
291-069-0250	12-1-2007	Adopt(T)	1-1-2008
291-069-0250	5-19-2008	Adopt	7-1-2008
291-069-0260	12-1-2007	Adopt(T)	1-1-2008
291-069-0260	5-19-2008	Adopt	7-1-2008
291-069-0270	12-1-2007	Adopt(T)	1-1-2008
291-069-0270	5-19-2008	Adopt	7-1-2008
291-069-0280	12-1-2007	Adopt(T)	1-1-2008
291-069-0280	5-19-2008	Adopt	7-1-2008
291-070-0005	4-10-2008	Am. & Ren.	5-1-2008
291-070-0010	4-10-2008	Am. & Ren.	5-1-2008
291-070-0015	4-10-2008	Repeal	5-1-2008
291-070-0020	4-10-2008	Repeal	5-1-2008
291-070-0025	4-10-2008	Repeal	5-1-2008
291-070-0026	4-10-2008	Repeal	5-1-2008
291-070-0027	4-10-2008	Repeal	5-1-2008
291-070-0028	4-10-2008	Repeal	5-1-2008
291-070-0030	4-10-2008	Repeal	5-1-2008
291-070-0035	4-10-2008	Repeal	5-1-2008
291-070-0041	4-10-2008	Repeal	5-1-2008
291-070-0043	4-10-2008	Repeal	5-1-2008
291-070-0045	4-10-2008	Repeal	5-1-2008
291-070-0050	4-10-2008	Repeal	5-1-2008
291-070-0055	4-10-2008	Repeal	5-1-2008
291-070-0056	4-10-2008	Repeal	5-1-2008
291-070-0080	4-10-2008	Repeal	5-1-2008
291-070-0115	4-10-2008	Adopt	5-1-2008
291-070-0120	4-10-2008	Adopt	5-1-2008
291-070-0125	4-10-2008	Adopt	5-1-2008
291-070-0130	4-10-2008	Adopt	5-1-2008
291-070-0135	4-10-2008	Adopt	5-1-2008
291-070-0140	4-10-2008	Adopt	5-1-2008
291-082-0010	5-13-2008	Am. & Ren.(T)	6-1-2008
291-082-0020	5-13-2008	Am. & Ren.(T)	6-1-2008
291-082-0021	5-13-2008	Am. & Ren.(T)	6-1-2008
291-082-0025	5-13-2008	Suspend	6-1-2008
291-082-0026	5-13-2008	Suspend	6-1-2008
291-082-0027	5-13-2008	Suspend	6-1-2008
291-082-0035	5-13-2008	Am. & Ren.(T)	6-1-2008
291-082-0045	5-13-2008	Am. & Ren.(T)	6-1-2008
291-082-0110	5-13-2008	Adopt(T)	6-1-2008
291-082-0115	5-13-2008	Adopt(T)	6-1-2008
291-082-0120	5-13-2008	Adopt(T)	6-1-2008
291-082-0125	5-13-2008	Adopt(T)	6-1-2008
291-082-0130	5-13-2008	Adopt(T)	6-1-2008
291-104-0005	5-13-2008	Am. & Ren.	6-1-2008
291-104-0010	5-13-2008	Repeal	6-1-2008
291-104-0015	5-13-2008	Repeal	6-1-2008
291-104-0025	5-13-2008	Repeal	6-1-2008
291-104-0030	5-13-2008	Repeal	6-1-2008
291-104-0033	5-13-2008	Repeal	6-1-2008
291-104-0035	5-13-2008	Repeal	6-1-2008
291-104-0111	5-13-2008	Amend	6-1-2008
291-104-0116	5-13-2008	Amend	6-1-2008
291-104-0125	5-13-2008	Amend	6-1-2008
291-104-0130	5-13-2008	Repeal	6-1-2008
291-104-0135	5-13-2008	Amend	6-1-2008

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291-105-0010	6-2-2008	Amend	7-1-2008
291-105-0021	6-2-2008	Amend	7-1-2008
291-105-0026	6-2-2008	Amend	7-1-2008
291-105-0028	6-2-2008	Amend	7-1-2008
291-105-0041	6-2-2008	Amend	7-1-2008
291-105-0046	6-2-2008	Amend	7-1-2008
291-105-0056	6-2-2008	Amend	7-1-2008
291-105-0064	6-2-2008	Amend	7-1-2008
291-105-0066	6-2-2008	Amend	7-1-2008
291-105-0069	6-2-2008	Amend	7-1-2008
291-105-0071	6-2-2008	Amend	7-1-2008
291-105-0081	6-2-2008	Amend	7-1-2008
291-105-0085	6-2-2008	Amend	7-1-2008
291-105-0100	6-2-2008	Amend	7-1-2008
291-127-0210	4-1-2008	Amend(T)	5-1-2008
291-127-0260	4-1-2008	Amend(T)	5-1-2008
291-131-0010	1-25-2008	Amend	3-1-2008
291-131-0015	1-25-2008	Amend	3-1-2008
291-131-0020	1-25-2008	Amend	3-1-2008
291-131-0025	1-25-2008	Amend	3-1-2008
291-131-0030	1-25-2008	Amend	3-1-2008
291-131-0035	1-25-2008	Amend	3-1-2008
291-131-0037	1-25-2008	Amend	3-1-2008
291-133-0005	4-1-2008	Amend(T)	5-1-2008
291-133-0010	4-1-2008	Amend(T)	5-1-2008
291-133-0015	4-1-2008	Amend(T)	5-1-2008
291-133-0025	4-1-2008	Amend(T)	5-1-2008
291-133-0035	4-1-2008	Amend(T)	5-1-2008
291-133-0045	4-1-2008	Suspend	5-1-2008
291-164-0005	3-4-2008	Amend(T)	4-1-2008
291-164-0010	3-4-2008	Amend(T)	4-1-2008
291-164-0015	3-4-2008	Amend(T)	4-1-2008
291-164-0020	3-4-2008	Amend(T)	4-1-2008
291-164-0025	3-4-2008	Amend(T)	4-1-2008
291-164-0030	3-4-2008	Amend(T)	4-1-2008
291-164-0045	3-4-2008	Suspend	4-1-2008
291-164-0050	3-4-2008	Adopt(T)	4-1-2008
291-205-0010	5-15-2008	Adopt(T)	6-1-2008
291-205-0020	5-15-2008	Adopt(T)	6-1-2008
291-205-0030	5-15-2008	Adopt(T)	6-1-2008
291-205-0040	5-15-2008	Adopt(T)	6-1-2008
291-205-0050	5-15-2008	Adopt(T)	6-1-2008
291-205-0060	5-15-2008	Adopt(T)	6-1-2008
291-205-0070	5-15-2008	Adopt(T)	6-1-2008
291-205-0080	5-15-2008	Adopt(T)	6-1-2008
291-205-0090	5-15-2008	Adopt(T)	6-1-2008
291-205-0100	5-15-2008	Adopt(T)	6-1-2008
291-205-0110	5-15-2008	Adopt(T)	6-1-2008
309-011-0100	12-5-2007	Adopt(T)	1-1-2008
309-011-0100	2-12-2008	Suspend	3-1-2008
309-031-0215	12-1-2007	Amend(T)	1-1-2008
309-032-0455	12-11-2007	Amend	1-1-2008
309-032-1095	4-15-2008	Adopt	5-1-2008
309-032-1190	1-1-2008	Amend(T)	2-1-2008
309-033-0735	1-1-2008	Adopt(T)	2-1-2008
309-035-0100	6-12-2008	Amend	7-1-2008
309-035-0105	6-12-2008	Amend	7-1-2008
309-035-0110	6-12-2008	Amend	7-1-2008
309-035-0113	6-12-2008	Amend	7-1-2008
309-035-0117	6-12-2008	Amend	7-1-2008
309-035-0120	6-12-2008	Amend	7-1-2008
309-035-0125	6-12-2008	Amend	7-1-2008
309-035-0145	6-12-2008	Amend	7-1-2008
309-035-0150	6-12-2008	Amend	7-1-2008
309-035-0157	6-12-2008	Amend	7-1-2008
309-035-0165	6-12-2008	Amend	7-1-2008
309-035-0167	6-12-2008	Amend	7-1-2008
309-035-0170	6-12-2008	Amend	7-1-2008
309-035-0185	6-12-2008	Amend	7-1-2008
309-035-0190	6-12-2008	Amend	7-1-2008
309-114-0000	12-1-2007	Amend(T)	1-1-2008
309-114-0000	4-7-2008	Amend(T)	5-1-2008
309-114-0000(T)	4-7-2008	Suspend	5-1-2008
309-114-0005	12-1-2007	Amend(T)	1-1-2008
309-114-0005	4-7-2008	Amend(T)	5-1-2008
309-114-0005(T)	4-7-2008	Suspend	5-1-2008
309-114-0010	12-1-2007	Amend(T)	1-1-2008
309-114-0010	4-7-2008	Amend(T)	5-1-2008
309-114-0010(T)	4-7-2008	Suspend	5-1-2008
309-114-0015	12-1-2007	Amend(T)	1-1-2008
309-114-0015	4-7-2008	Amend(T)	5-1-2008
309-114-0015(T)	4-7-2008	Suspend	5-1-2008
309-114-0020	12-1-2007	Amend(T)	1-1-2008
309-114-0020	4-7-2008	Amend(T)	5-1-2008
309-114-0020(T)	4-7-2008	Suspend	5-1-2008
309-114-0025	12-1-2007	Amend(T)	1-1-2008
309-114-0025	4-7-2008	Amend(T)	5-1-2008
309-114-0025(T)	4-7-2008	Suspend	5-1-2008
309-114-0030	4-7-2008	Adopt(T)	5-1-2008
309-118-0015	12-1-2007	Amend(T)	1-1-2008
325-001-0000	4-14-2008	Adopt	5-1-2008
325-001-0001	4-14-2008	Amend	5-1-2008
330-007-0200	12-13-2007	Adopt	1-1-2008
330-007-0210	12-13-2007	Adopt	1-1-2008
330-007-0220	12-13-2007	Adopt	1-1-2008
330-007-0230	12-13-2007	Adopt	1-1-2008
330-007-0240	12-13-2007	Adopt	1-1-2008
330-007-0250	12-13-2007	Adopt	1-1-2008
330-007-0260	12-13-2007	Adopt	1-1-2008
330-007-0270	12-13-2007	Adopt	1-1-2008
330-007-0280	12-13-2007	Adopt	1-1-2008
330-007-0290	12-13-2007	Adopt	1-1-2008
330-007-0300	12-13-2007	Adopt	1-1-2008
330-007-0310	12-13-2007	Adopt	1-1-2008
330-007-0320	12-13-2007	Adopt	1-1-2008
330-007-0330	12-13-2007	Adopt	1-1-2008
330-070-0010	12-1-2007	Amend	1-1-2008
330-070-0013	12-1-2007	Amend	1-1-2008
330-070-0014	12-1-2007	Amend	1-1-2008
330-070-0021	12-1-2007	Amend	1-1-2008
330-070-0022	12-1-2007	Amend	1-1-2008

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330-070-0026	12-1-2007	Amend	1-1-2008
330-070-0048	12-1-2007	Amend	1-1-2008
330-070-0059	12-1-2007	Amend	1-1-2008
330-070-0060	12-1-2007	Amend	1-1-2008
330-070-0064	12-1-2007	Amend	1-1-2008
330-070-0073	12-1-2007	Amend	1-1-2008
330-070-0089	12-1-2007	Amend	1-1-2008
330-070-0091	12-1-2007	Amend	1-1-2008
330-070-0097	12-1-2007	Amend	1-1-2008
330-090-0105	12-1-2007	Amend	1-1-2008
330-090-0105	3-21-2008	Amend	5-1-2008
330-090-0110	12-1-2007	Amend	1-1-2008
330-090-0110	3-21-2008	Amend	5-1-2008
330-090-0120	12-1-2007	Amend	1-1-2008
330-090-0120	3-21-2008	Amend	5-1-2008
330-090-0130	12-1-2007	Amend	1-1-2008
330-090-0130	3-21-2008	Amend	5-1-2008
330-090-0135	12-1-2007	Amend	1-1-2008
330-090-0140	12-1-2007	Amend	1-1-2008
330-090-0140	3-21-2008	Amend	5-1-2008
330-090-0150	12-1-2007	Amend	1-1-2008
330-090-0150	3-21-2008	Amend	5-1-2008
330-092-0005	3-1-2008	Adopt	4-1-2008
330-092-0010	3-1-2008	Adopt	4-1-2008
330-092-0015	3-1-2008	Adopt	4-1-2008
330-092-0020	3-1-2008	Adopt	4-1-2008
330-092-0025	3-1-2008	Adopt	4-1-2008
330-092-0030	3-1-2008	Adopt	4-1-2008
330-092-0035	3-1-2008	Adopt	4-1-2008
330-092-0040	3-1-2008	Adopt	4-1-2008
330-092-0045	3-1-2008	Adopt	4-1-2008
330-092-0050	3-1-2008	Adopt	4-1-2008
330-092-0055	3-1-2008	Adopt	4-1-2008
330-092-0060	3-1-2008	Adopt	4-1-2008
330-092-0065	3-1-2008	Adopt	4-1-2008
330-092-0070	3-1-2008	Adopt	4-1-2008
330-135-0010	1-2-2008	Adopt	2-1-2008
330-135-0015	1-2-2008	Adopt	2-1-2008
330-135-0020	1-2-2008	Adopt	2-1-2008
330-135-0025	1-2-2008	Adopt	2-1-2008
330-135-0030	1-2-2008	Adopt	2-1-2008
330-135-0035	1-2-2008	Adopt	2-1-2008
330-135-0040	1-2-2008	Adopt	2-1-2008
330-135-0045	1-2-2008	Adopt	2-1-2008
330-135-0050	1-2-2008	Adopt	2-1-2008
330-135-0055	1-2-2008	Adopt	2-1-2008
330-150-0005	1-30-2008	Adopt	3-1-2008
330-150-0015	1-30-2008	Adopt	3-1-2008
330-150-0020	1-30-2008	Adopt	3-1-2008
330-150-0025	1-30-2008	Adopt	3-1-2008
330-150-0030	1-30-2008	Adopt	3-1-2008
331-800-0010	3-15-2008	Adopt(T)	4-1-2008
331-800-0010	6-1-2008	Adopt	7-1-2008
331-800-0010(T)	6-1-2008	Repeal	7-1-2008
331-800-0020	3-15-2008	Adopt(T)	4-1-2008
331-800-0020	6-1-2008	Adopt	7-1-2008
331-800-0020(T)	6-1-2008	Repeal	7-1-2008
331-810-0020	3-15-2008	Adopt(T)	4-1-2008
331-810-0020	6-1-2008	Adopt	7-1-2008
331-810-0020(T)	6-1-2008	Repeal	7-1-2008
331-810-0030	3-15-2008	Adopt(T)	4-1-2008
331-810-0030	6-1-2008	Adopt	7-1-2008
331-810-0030(T)	6-1-2008	Repeal	7-1-2008
331-810-0035	3-15-2008	Adopt(T)	4-1-2008
331-810-0035	6-1-2008	Adopt	7-1-2008
331-810-0035(T)	6-1-2008	Repeal	7-1-2008
331-810-0040	3-15-2008	Adopt(T)	4-1-2008
331-810-0040	6-1-2008	Adopt	7-1-2008
331-810-0040(T)	6-1-2008	Repeal	7-1-2008
331-810-0050	6-1-2008	Adopt	7-1-2008
331-810-0055	6-1-2008	Adopt	7-1-2008
331-820-0010	3-15-2008	Adopt(T)	4-1-2008
331-820-0010	6-1-2008	Adopt	7-1-2008
331-820-0010(T)	6-1-2008	Repeal	7-1-2008
331-820-0020	3-15-2008	Adopt(T)	4-1-2008
331-820-0020	6-1-2008	Adopt	7-1-2008
331-820-0020(T)	6-1-2008	Repeal	7-1-2008
331-830-0005	6-1-2008	Adopt	7-1-2008
331-830-0010	6-1-2008	Adopt	7-1-2008
331-830-0020	6-1-2008	Adopt	7-1-2008
331-840-0010	6-1-2008	Adopt	7-1-2008
331-840-0020	6-1-2008	Adopt	7-1-2008
331-840-0030	6-1-2008	Adopt	7-1-2008
331-840-0040	6-1-2008	Adopt	7-1-2008
331-840-0050	6-1-2008	Adopt	7-1-2008
331-840-0060	6-1-2008	Adopt	7-1-2008
331-850-0010	3-15-2008	Adopt(T)	4-1-2008
331-850-0010	6-1-2008	Adopt	7-1-2008
331-850-0010(T)	6-1-2008	Repeal	7-1-2008
333-003-0010	5-5-2008	Amend	6-1-2008
333-003-0020	5-5-2008	Amend	6-1-2008
333-003-0030	5-5-2008	Repeal	6-1-2008
333-003-0040	5-5-2008	Amend	6-1-2008
333-003-0050	5-5-2008	Amend	6-1-2008
333-003-0060	5-5-2008	Repeal	6-1-2008
333-003-0065	5-5-2008	Adopt	6-1-2008
333-003-0070	5-5-2008	Amend	6-1-2008
333-003-0080	5-5-2008	Amend	6-1-2008
333-003-0105	5-5-2008	Amend	6-1-2008
333-003-0110	5-5-2008	Amend	6-1-2008
333-003-0115	5-5-2008	Amend	6-1-2008
333-003-0125	5-5-2008	Amend	6-1-2008
333-003-0130	5-5-2008	Amend	6-1-2008
333-003-0200	5-5-2008	Adopt	6-1-2008
333-008-0000	1-1-2008	Amend	2-1-2008
333-008-0010	1-1-2008	Amend	2-1-2008
333-008-0020	1-1-2008	Amend	2-1-2008
333-008-0025	1-1-2008	Amend	2-1-2008
333-008-0030	1-1-2008	Amend	2-1-2008
333-008-0040	1-1-2008	Amend	2-1-2008
333-008-0050	1-1-2008	Amend	2-1-2008

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333-008-0070	1-1-2008	Amend	2-1-2008
333-008-0080	1-1-2008	Amend	2-1-2008
333-008-0090	1-1-2008	Amend	2-1-2008
333-008-0110	1-1-2008	Amend	2-1-2008
333-008-0120	1-1-2008	Amend	2-1-2008
333-049-0010	3-17-2008	Amend	5-1-2008
333-049-0020	3-17-2008	Amend	5-1-2008
333-049-0030	3-17-2008	Amend	5-1-2008
333-049-0040	3-17-2008	Amend	5-1-2008
333-049-0050	3-17-2008	Amend	5-1-2008
333-049-0060	3-17-2008	Amend	5-1-2008
333-049-0065	3-17-2008	Amend	5-1-2008
333-049-0070	3-17-2008	Amend	5-1-2008
333-049-0080	3-17-2008	Amend	5-1-2008
333-049-0090	3-17-2008	Amend	5-1-2008
333-049-0110	3-17-2008	Repeal	5-1-2008
333-049-0120	3-17-2008	Amend	5-1-2008
333-050-0010	3-17-2008	Amend	5-1-2008
333-050-0020	1-8-2008	Amend(T)	2-1-2008
333-050-0020	3-17-2008	Amend	5-1-2008
333-050-0030	3-17-2008	Amend	5-1-2008
333-050-0040	3-17-2008	Amend	5-1-2008
333-050-0050	1-8-2008	Amend(T)	2-1-2008
333-050-0050	3-17-2008	Amend	5-1-2008
333-050-0060	3-17-2008	Amend	5-1-2008
333-050-0070	3-17-2008	Amend	5-1-2008
333-050-0080	3-17-2008	Amend	5-1-2008
333-050-0090	3-17-2008	Amend	5-1-2008
333-050-0095	3-17-2008	Amend	5-1-2008
333-050-0100	3-17-2008	Amend	5-1-2008
333-050-0110	3-17-2008	Amend	5-1-2008
333-050-0120	1-8-2008	Amend(T)	2-1-2008
333-050-0120	3-17-2008	Amend	5-1-2008
333-050-0130	3-17-2008	Amend	5-1-2008
333-050-0140	3-17-2008	Amend	5-1-2008
333-052-0030	4-3-2008	Amend	5-1-2008
333-052-0040	4-3-2008	Amend	5-1-2008
333-052-0050	4-3-2008	Amend	5-1-2008
333-052-0060	4-3-2008	Amend	5-1-2008
333-052-0065	4-3-2008	Amend	5-1-2008
333-052-0070	4-3-2008	Amend	5-1-2008
333-052-0075	4-3-2008	Amend	5-1-2008
333-052-0080	4-3-2008	Amend	5-1-2008
333-052-0090	4-3-2008	Amend	5-1-2008
333-052-0100	4-3-2008	Amend	5-1-2008
333-052-0110	4-3-2008	Amend	5-1-2008
333-052-0120	4-3-2008	Amend	5-1-2008
333-052-0130	4-3-2008	Amend	5-1-2008
333-061-0030	2-15-2008	Amend	3-1-2008
333-061-0032	2-15-2008	Amend	3-1-2008
333-061-0034	2-15-2008	Amend	3-1-2008
333-061-0036	2-15-2008	Amend	3-1-2008
333-061-0040	2-15-2008	Amend	3-1-2008
333-061-0043	2-15-2008	Amend	3-1-2008
333-061-0045	2-15-2008	Amend	3-1-2008
333-061-0050	2-15-2008	Amend	3-1-2008
333-061-0061	2-15-2008	Amend	3-1-2008
333-061-0070	2-15-2008	Amend	3-1-2008
333-061-0072	2-15-2008	Amend	3-1-2008
333-061-0076	2-15-2008	Amend	3-1-2008
333-061-0215	2-15-2008	Amend	3-1-2008
333-061-0245	2-15-2008	Amend	3-1-2008
333-061-0250	2-15-2008	Amend	3-1-2008
333-061-0260	2-15-2008	Amend	3-1-2008
333-061-0265	2-15-2008	Amend	3-1-2008
333-080-0040	7-1-2008	Adopt	4-1-2008
333-080-0050	7-1-2008	Adopt	4-1-2008
333-150-0000	3-5-2008	Amend	4-1-2008
333-520-0073	3-7-2008	Adopt	4-1-2008
333-520-0110	7-1-2008	Amend	4-1-2008
333-536-0005	1-1-2008	Amend	2-1-2008
333-536-0010	1-1-2008	Amend	2-1-2008
333-536-0015	1-1-2008	Amend	2-1-2008
333-536-0020	1-1-2008	Amend	2-1-2008
333-536-0030	1-1-2008	Amend	2-1-2008
333-536-0040	1-1-2008	Amend	2-1-2008
333-536-0050	1-1-2008	Amend	2-1-2008
333-536-0070	1-1-2008	Amend	2-1-2008
333-536-0075	1-1-2008	Amend	2-1-2008
333-536-0080	1-1-2008	Amend	2-1-2008
333-536-0085	1-1-2008	Amend	2-1-2008
333-536-0090	1-1-2008	Amend	2-1-2008
333-536-0095	1-1-2008	Amend	2-1-2008
333-536-0100	1-1-2008	Repeal	2-1-2008
333-536-0105	1-1-2008	Adopt	2-1-2008
333-536-0115	1-1-2008	Adopt	2-1-2008
335-001-0005	4-10-2008	Amend	5-1-2008
335-001-0008	4-10-2008	Adopt	5-1-2008
335-001-0011	4-10-2008	Amend	5-1-2008
335-005-0010	4-10-2008	Amend	5-1-2008
335-005-0020	4-10-2008	Amend	5-1-2008
335-060-0010	4-10-2008	Amend	5-1-2008
335-070-0040	4-10-2008	Amend	5-1-2008
335-095-0010	4-10-2008	Amend	5-1-2008
335-095-0030	4-10-2008	Amend	5-1-2008
335-095-0040	4-10-2008	Amend	5-1-2008
335-095-0050	4-10-2008	Amend	5-1-2008
335-095-0055	4-10-2008	Amend	5-1-2008
335-095-0060	4-10-2008	Amend	5-1-2008
335-095-0065	4-10-2008	Amend	5-1-2008
340-011-0005	3-20-2008	Amend	5-1-2008
340-011-0009	3-20-2008	Adopt	5-1-2008
340-011-0010	2-25-2008	Amend	4-1-2008
340-011-0029	2-25-2008	Amend	4-1-2008
340-011-0510	3-20-2008	Amend	5-1-2008
340-011-0515	3-20-2008	Amend	5-1-2008
340-011-0573	3-20-2008	Adopt	5-1-2008
340-011-0575	3-20-2008	Amend	5-1-2008
340-041-0009	5-5-2008	Amend	6-1-2008
340-054-0035	2-27-2008	Amend	4-1-2008
340-054-0060	2-27-2008	Amend	4-1-2008

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340-055-0007	5-5-2008	Amend	6-1-2008
340-055-0010	5-5-2008	Amend	6-1-2008
340-055-0013	5-5-2008	Amend	6-1-2008
340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
340-055-0015	5-5-2008	Am. & Ren.	6-1-2008
340-055-0020	5-5-2008	Amend	6-1-2008
340-055-0025	5-5-2008	Amend	6-1-2008
340-055-0030	5-5-2008	Amend	6-1-2008
340-122-0210	3-10-2008	Amend	4-1-2008
340-122-0330	3-10-2008	Amend	4-1-2008
340-150-0006	3-10-2008	Amend	4-1-2008
340-150-0008	3-10-2008	Amend	4-1-2008
340-150-0010	3-10-2008	Amend	4-1-2008
340-150-0020	3-10-2008	Amend	4-1-2008
340-150-0021	3-10-2008	Amend	4-1-2008
340-150-0052	3-10-2008	Amend	4-1-2008
340-150-0102	3-10-2008	Amend	4-1-2008
340-150-0110	3-10-2008	Amend	4-1-2008
340-150-0135	3-10-2008	Amend	4-1-2008
340-150-0150	3-10-2008	Amend	4-1-2008
340-150-0152	3-10-2008	Amend	4-1-2008
340-150-0160	3-10-2008	Amend	4-1-2008
340-150-0163	3-10-2008	Amend	4-1-2008
340-150-0166	3-10-2008	Amend	4-1-2008
340-150-0167	3-10-2008	Amend	4-1-2008
340-150-0168	3-10-2008	Amend	4-1-2008
340-150-0180	3-10-2008	Amend	4-1-2008
340-150-0200	3-10-2008	Amend	4-1-2008
340-150-0210	3-10-2008	Adopt	4-1-2008
340-150-0250	3-10-2008	Amend	4-1-2008
340-150-0300	3-10-2008	Amend	4-1-2008
340-150-0310	3-10-2008	Amend	4-1-2008
340-150-0350	3-10-2008	Amend	4-1-2008
340-150-0352	3-10-2008	Amend	4-1-2008
340-150-0354	3-10-2008	Amend	4-1-2008
340-150-0360	3-10-2008	Amend	4-1-2008
340-150-0410	3-10-2008	Amend	4-1-2008
340-150-0430	3-10-2008	Amend	4-1-2008
340-150-0450	3-10-2008	Amend	4-1-2008
340-150-0455	3-10-2008	Amend	4-1-2008
340-150-0460	3-10-2008	Amend	4-1-2008
340-150-0465	3-10-2008	Amend	4-1-2008
340-150-0470	3-10-2008	Amend	4-1-2008
340-150-0510	3-10-2008	Amend	4-1-2008
340-150-0555	3-10-2008	Amend	4-1-2008
340-150-0560	3-10-2008	Amend	4-1-2008
340-160-0030	3-10-2008	Amend	4-1-2008
340-160-0150	3-10-2008	Amend	4-1-2008
340-162-0005	3-10-2008	Amend	4-1-2008
340-162-0010	3-10-2008	Amend	4-1-2008
340-162-0020	3-10-2008	Amend	4-1-2008
340-162-0040	3-10-2008	Amend	4-1-2008
340-162-0054	3-10-2008	Repeal	4-1-2008
340-162-0150	3-10-2008	Amend	4-1-2008
340-200-0040	3-20-2008	Amend	5-1-2008
340-222-0020	3-6-2008	Amend(T)	4-1-2008
340-248-0260	11-30-2007	Amend	1-1-2008
350-011-0003	4-1-2008	Amend	4-1-2008
350-011-0011	4-1-2008	Adopt	4-1-2008
350-012-0007	4-1-2008	Amend	4-1-2008
350-012-0008	4-1-2008	Amend	4-1-2008
350-016-0009	4-1-2008	Amend	4-1-2008
407-005-0110	12-1-2007	Amend	1-1-2008
407-007-0000	3-31-2008	Adopt(T)	5-1-2008
407-007-0010	3-31-2008	Adopt(T)	5-1-2008
407-007-0020	3-31-2008	Adopt(T)	5-1-2008
407-007-0030	3-31-2008	Adopt(T)	5-1-2008
407-007-0040	3-31-2008	Adopt(T)	5-1-2008
407-007-0050	3-31-2008	Adopt(T)	5-1-2008
407-007-0060	3-31-2008	Adopt(T)	5-1-2008
407-007-0070	3-31-2008	Adopt(T)	5-1-2008
407-007-0080	3-31-2008	Adopt(T)	5-1-2008
407-007-0090	3-31-2008	Adopt(T)	5-1-2008
407-007-0100	5-22-2008	Adopt(T)	7-1-2008
407-007-0210	3-31-2008	Amend(T)	5-1-2008
407-007-0270	3-31-2008	Amend(T)	5-1-2008
407-007-0330	3-31-2008	Amend(T)	5-1-2008
407-012-0005	12-1-2007	Adopt	1-1-2008
407-012-0010	12-1-2007	Adopt	1-1-2008
407-012-0015	12-1-2007	Adopt	1-1-2008
407-012-0020	12-1-2007	Adopt	1-1-2008
407-012-0025	12-1-2007	Adopt	1-1-2008
407-014-0300	1-1-2008	Adopt	2-1-2008
407-014-0305	1-1-2008	Adopt	2-1-2008
407-014-0310	1-1-2008	Adopt	2-1-2008
407-014-0315	1-1-2008	Adopt	2-1-2008
407-014-0320	1-1-2008	Adopt	2-1-2008
407-045-0800	12-3-2007	Adopt(T)	1-1-2008
407-045-0800	5-30-2008	Adopt	7-1-2008
407-045-0800(T)	5-30-2008	Repeal	7-1-2008
407-045-0810	12-3-2007	Adopt(T)	1-1-2008
407-045-0810	5-30-2008	Adopt	7-1-2008
407-045-0810(T)	5-30-2008	Repeal	7-1-2008
407-045-0820	12-3-2007	Adopt(T)	1-1-2008
407-045-0820	5-30-2008	Adopt	7-1-2008
407-045-0820(T)	5-30-2008	Repeal	7-1-2008
407-045-0830	12-3-2007	Adopt(T)	1-1-2008
407-045-0830	5-30-2008	Adopt	7-1-2008
407-045-0830(T)	5-30-2008	Repeal	7-1-2008
407-045-0840	12-3-2007	Adopt(T)	1-1-2008
407-045-0840(T)	5-30-2008	Repeal	7-1-2008
407-045-0850	12-3-2007	Adopt(T)	1-1-2008
407-045-0850	5-30-2008	Adopt	7-1-2008
407-045-0850(T)	5-30-2008	Repeal	7-1-2008
407-045-0860	12-3-2007	Adopt(T)	1-1-2008
407-045-0860	5-30-2008	Adopt	7-1-2008
407-045-0860(T)	5-30-2008	Repeal	7-1-2008
407-045-0870	12-3-2007	Adopt(T)	1-1-2008
407-045-0870	5-30-2008	Adopt	7-1-2008

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407-045-0880	12-3-2007	Adopt(T)	1-1-2008
407-045-0880	5-30-2008	Adopt	7-1-2008
407-045-0880(T)	5-30-2008	Repeal	7-1-2008
407-045-0890	12-3-2007	Adopt(T)	1-1-2008
407-045-0890	5-30-2008	Adopt	7-1-2008
407-045-0890(T)	5-30-2008	Repeal	7-1-2008
407-045-0900	12-3-2007	Adopt(T)	1-1-2008
407-045-0900	5-30-2008	Adopt	7-1-2008
407-045-0900(T)	5-30-2008	Repeal	7-1-2008
407-045-0910	12-3-2007	Adopt(T)	1-1-2008
407-045-0910	5-30-2008	Adopt	7-1-2008
407-045-0910(T)	5-30-2008	Repeal	7-1-2008
407-045-0920	12-3-2007	Adopt(T)	1-1-2008
407-045-0920	5-30-2008	Adopt	7-1-2008
407-045-0920(T)	5-30-2008	Repeal	7-1-2008
407-045-0930	12-3-2007	Adopt(T)	1-1-2008
407-045-0930	5-30-2008	Adopt	7-1-2008
407-045-0930(T)	5-30-2008	Repeal	7-1-2008
407-045-0940	12-3-2007	Adopt(T)	1-1-2008
407-045-0940	5-30-2008	Adopt	7-1-2008
407-045-0940(T)	5-30-2008	Repeal	7-1-2008
407-045-0950	12-3-2007	Adopt(T)	1-1-2008
407-045-0950	5-30-2008	Adopt	7-1-2008
407-045-0950(T)	5-30-2008	Repeal	7-1-2008
407-045-0960	12-3-2007	Adopt(T)	1-1-2008
407-045-0960	5-30-2008	Adopt	7-1-2008
407-045-0960(T)	5-30-2008	Repeal	7-1-2008
407-045-0970	12-3-2007	Adopt(T)	1-1-2008
407-045-0970	5-30-2008	Adopt	7-1-2008
407-045-0970(T)	5-30-2008	Repeal	7-1-2008
407-045-0980	12-3-2007	Adopt(T)	1-1-2008
407-045-0980	5-30-2008	Adopt	7-1-2008
407-045-0980(T)	5-30-2008	Repeal	7-1-2008
407-120-0112	1-1-2008	Adopt(T)	2-1-2008
407-120-0112	2-1-2008	Adopt	3-1-2008
407-120-0112(T)	2-1-2008	Repeal	3-1-2008
407-120-0114	1-1-2008	Adopt(T)	2-1-2008
407-120-0114	2-1-2008	Adopt	3-1-2008
407-120-0114(T)	2-1-2008	Repeal	3-1-2008
407-120-0116	1-1-2008	Adopt(T)	2-1-2008
407-120-0116	2-1-2008	Adopt	3-1-2008
407-120-0116(T)	2-1-2008	Repeal	3-1-2008
407-120-0118	1-1-2008	Adopt(T)	2-1-2008
407-120-0118	2-1-2008	Adopt	3-1-2008
407-120-0118(T)	2-1-2008	Repeal	3-1-2008
407-120-0165	1-1-2008	Adopt(T)	2-1-2008
407-120-0165	2-1-2008	Adopt	3-1-2008
407-120-0165(T)	2-1-2008	Repeal	3-1-2008
407-120-0300	1-1-2008	Adopt	2-1-2008
407-120-0310	1-1-2008	Adopt	2-1-2008
407-120-0320	1-1-2008	Adopt	2-1-2008
407-120-0330	1-1-2008	Adopt	2-1-2008
407-120-0340	1-1-2008	Adopt	2-1-2008
407-120-0350	1-1-2008	Adopt	2-1-2008
407-120-0360	1-1-2008	Adopt	2-1-2008
407-120-0370	1-1-2008	Adopt	2-1-2008
407-120-0380	1-1-2008	Adopt	2-1-2008
410-001-0100	1-1-2008	Amend(T)	2-1-2008
410-001-0100	2-1-2008	Am. & Ren.	3-1-2008
410-001-0100(T)	2-1-2008	Repeal	3-1-2008
410-001-0110	1-1-2008	Amend(T)	2-1-2008
410-001-0110	2-1-2008	Am. & Ren.	3-1-2008
410-001-0110(T)	2-1-2008	Repeal	3-1-2008
410-001-0120	1-1-2008	Amend(T)	2-1-2008
410-001-0120	2-1-2008	Am. & Ren.	3-1-2008
410-001-0120(T)	2-1-2008	Repeal	3-1-2008
410-001-0130	1-1-2008	Amend(T)	2-1-2008
410-001-0130	2-1-2008	Am. & Ren.	3-1-2008
410-001-0130(T)	2-1-2008	Repeal	3-1-2008
410-001-0140	1-1-2008	Amend(T)	2-1-2008
410-001-0140	2-1-2008	Am. & Ren.	3-1-2008
410-001-0140(T)	2-1-2008	Repeal	3-1-2008
410-001-0150	1-1-2008	Amend(T)	2-1-2008
410-001-0150	2-1-2008	Am. & Ren.	3-1-2008
410-001-0150(T)	2-1-2008	Repeal	3-1-2008
410-001-0160	1-1-2008	Amend(T)	2-1-2008
410-001-0160	2-1-2008	Am. & Ren.	3-1-2008
410-001-0160(T)	2-1-2008	Repeal	3-1-2008
410-001-0170	1-1-2008	Amend(T)	2-1-2008
410-001-0170	2-1-2008	Am. & Ren.	3-1-2008
410-001-0170(T)	2-1-2008	Repeal	3-1-2008
410-001-0180	1-1-2008	Amend(T)	2-1-2008
410-001-0180	2-1-2008	Am. & Ren.	3-1-2008
410-001-0180(T)	2-1-2008	Repeal	3-1-2008
410-001-0190	1-1-2008	Amend(T)	2-1-2008
410-001-0190	2-1-2008	Am. & Ren.	3-1-2008
410-001-0190(T)	2-1-2008	Repeal	3-1-2008
410-001-0200	1-1-2008	Amend(T)	2-1-2008
410-001-0200	2-1-2008	Am. & Ren.	3-1-2008
410-001-0200(T)	2-1-2008	Repeal	3-1-2008
410-050-0100	1-25-2008	Amend	3-1-2008
410-050-0110	1-25-2008	Amend	3-1-2008
410-050-0120	1-25-2008	Amend	3-1-2008
410-050-0130	1-25-2008	Amend	3-1-2008
410-050-0140	1-25-2008	Amend	3-1-2008
410-050-0150	1-25-2008	Amend	3-1-2008
410-050-0160	1-25-2008	Amend	3-1-2008
410-050-0170	1-25-2008	Amend	3-1-2008
410-050-0180	1-25-2008	Amend	3-1-2008
410-050-0190	1-25-2008	Amend	3-1-2008
410-050-0200	1-25-2008	Amend	3-1-2008
410-050-0210	1-25-2008	Amend	3-1-2008
410-050-0220	1-25-2008	Amend	3-1-2008
410-050-0230	1-25-2008	Amend	3-1-2008
410-050-0240	1-25-2008	Amend	3-1-2008
410-050-0250	1-25-2008	Amend	3-1-2008
410-050-0401	1-25-2008	Amend	3-1-2008
410-050-0411	1-25-2008	Amend	3-1-2008
410-050-0421	1-25-2008	Amend	3-1-2008
410-050-0431	1-25-2008	Amend	3-1-2008
410-050-0441	1-25-2008	Repeal	3-1-2008

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410-050-0471	1-25-2008	Amend	3-1-2008
410-050-0481	1-25-2008	Amend	3-1-2008
410-050-0491	1-25-2008	Amend	3-1-2008
410-050-0501	1-25-2008	Amend	3-1-2008
410-050-0511	1-25-2008	Amend	3-1-2008
410-050-0521	1-25-2008	Amend	3-1-2008
410-050-0531	1-25-2008	Amend	3-1-2008
410-050-0541	1-25-2008	Amend	3-1-2008
410-050-0551	1-25-2008	Amend	3-1-2008
410-050-0561	1-25-2008	Amend	3-1-2008
410-050-0571	1-25-2008	Repeal	3-1-2008
410-050-0581	1-25-2008	Repeal	3-1-2008
410-050-0591	1-25-2008	Amend	3-1-2008
410-050-0601	1-25-2008	Adopt	3-1-2008
410-050-0700	1-25-2008	Amend	3-1-2008
410-050-0710	1-25-2008	Amend	3-1-2008
410-050-0720	1-25-2008	Amend	3-1-2008
410-050-0730	1-25-2008	Amend	3-1-2008
410-050-0740	1-25-2008	Amend	3-1-2008
410-050-0750	1-25-2008	Amend	3-1-2008
410-050-0750	6-12-2008	Amend(T)	7-1-2008
410-050-0760	1-25-2008	Amend	3-1-2008
410-050-0770	1-25-2008	Amend	3-1-2008
410-050-0780	1-25-2008	Amend	3-1-2008
410-050-0790	1-25-2008	Amend	3-1-2008
410-050-0800	1-25-2008	Amend	3-1-2008
410-050-0810	1-25-2008	Amend	3-1-2008
410-050-0820	1-25-2008	Amend	3-1-2008
410-050-0830	1-25-2008	Amend	3-1-2008
410-050-0840	1-25-2008	Amend	3-1-2008
410-050-0850	1-25-2008	Amend	3-1-2008
410-050-0860	1-25-2008	Amend	3-1-2008
410-050-0861	1-1-2008	Amend	2-1-2008
410-050-0861	1-25-2008	Amend	3-1-2008
410-050-0870	1-25-2008	Amend	3-1-2008
410-120-0000	1-1-2008	Amend	1-1-2008
410-120-0010	12-5-2007	Adopt(T)	1-1-2008
410-120-0025	3-14-2008	Amend(T)	4-1-2008
410-120-0025	5-1-2008	Amend	6-1-2008
410-120-0025(T)	5-1-2008	Repeal	6-1-2008
410-120-0030	4-1-2008	Adopt(T)	5-1-2008
410-120-0030	7-1-2008	Amend	7-1-2008
410-120-0030(T)	7-1-2008	Repeal	7-1-2008
410-120-0035	7-1-2008	Adopt(T)	7-1-2008
410-120-1200	1-1-2008	Amend	1-1-2008
410-120-1200	7-1-2008	Amend	7-1-2008
410-120-1230	3-1-2008	Amend	4-1-2008
410-120-1295	1-1-2008	Amend	1-1-2008
410-120-1320	1-1-2008	Amend	1-1-2008
410-120-1340	1-1-2008	Amend	1-1-2008
410-120-1397	1-1-2008	Amend	1-1-2008
410-120-1560	1-1-2008	Amend	1-1-2008
410-120-1570	1-1-2008	Amend	1-1-2008
410-121-0021	7-1-2008	Amend	7-1-2008
410-121-0030	7-1-2008	Amend	7-1-2008
410-121-0032	7-1-2008	Amend	7-1-2008
410-121-0040	1-1-2008	Amend	1-1-2008
410-121-0040	4-1-2008	Amend	5-1-2008
410-121-0040	7-1-2008	Amend	7-1-2008
410-121-0135	1-1-2008	Amend	1-1-2008
410-121-0140	1-1-2008	Amend	1-1-2008
410-121-0145	4-1-2008	Amend	5-1-2008
410-121-0146	1-1-2008	Amend	1-1-2008
410-121-0147	4-1-2008	Amend	5-1-2008
410-121-0148	1-1-2008	Amend	1-1-2008
410-121-0150	1-1-2008	Amend	1-1-2008
410-121-0155	1-1-2008	Amend	1-1-2008
410-121-0157	7-1-2008	Amend	7-1-2008
410-121-0160	1-1-2008	Amend	1-1-2008
410-121-0300	1-1-2008	Amend	1-1-2008
410-122-0020	7-1-2008	Amend	7-1-2008
410-122-0080	7-1-2008	Amend	7-1-2008
410-122-0184	7-1-2008	Amend	7-1-2008
410-122-0186	7-1-2008	Amend	7-1-2008
410-122-0202	1-1-2008	Amend	1-1-2008
410-122-0202	7-1-2008	Amend	7-1-2008
410-122-0203	1-1-2008	Amend	1-1-2008
410-122-0250	7-1-2008	Amend	7-1-2008
410-122-0300	7-1-2008	Amend	7-1-2008
410-122-0320	1-1-2008	Amend	1-1-2008
410-122-0320	7-1-2008	Amend	7-1-2008
410-122-0325	1-1-2008	Amend	1-1-2008
410-122-0325	7-1-2008	Amend	7-1-2008
410-122-0330	1-1-2008	Amend	1-1-2008
410-122-0365	7-1-2008	Amend	7-1-2008
410-122-0380	1-1-2008	Amend	1-1-2008
410-122-0400	7-1-2008	Amend	7-1-2008
410-122-0475	7-1-2008	Amend	7-1-2008
410-122-0500	7-1-2008	Amend	7-1-2008
410-122-0520	7-1-2008	Amend	7-1-2008
410-122-0540	7-1-2008	Amend	7-1-2008
410-122-0658	7-1-2008	Adopt	7-1-2008
410-122-0660	7-1-2008	Amend	7-1-2008
410-122-0662	1-1-2008	Adopt	1-1-2008
410-122-0678	1-1-2008	Amend	1-1-2008
410-122-0720	1-1-2008	Amend	1-1-2008
410-122-0720	7-1-2008	Amend	7-1-2008
410-123-1000	1-1-2008	Amend	1-1-2008
410-123-1000	7-1-2008	Amend	7-1-2008
410-123-1040	1-1-2008	Repeal	1-1-2008
410-123-1060	1-1-2008	Amend	1-1-2008
410-123-1100	1-1-2008	Amend	1-1-2008
410-123-1160	1-1-2008	Amend	1-1-2008
410-123-1200	1-1-2008	Amend	1-1-2008
410-123-1220	1-1-2008	Amend	1-1-2008
410-123-1240	1-1-2008	Amend	1-1-2008
410-123-1260	1-1-2008	Amend	1-1-2008
410-123-1260	7-1-2008	Amend	7-1-2008
410-123-1490	1-1-2008	Amend	1-1-2008
410-123-1540	7-1-2008	Amend	7-1-2008

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410-123-1670	1-1-2008	Amend	1-1-2008
410-123-1670	7-1-2008	Amend	7-1-2008
410-125-0000	7-1-2008	Amend	7-1-2008
410-125-0047	7-1-2008	Amend	7-1-2008
410-125-0080	12-20-2007	Amend(T)	2-1-2008
410-125-0080	5-1-2008	Amend	6-1-2008
410-125-0080	7-1-2008	Amend	7-1-2008
410-125-0141	7-1-2008	Amend	7-1-2008
410-125-0220	7-1-2008	Amend	7-1-2008
410-125-0360	7-1-2008	Amend	7-1-2008
410-125-0400	7-1-2008	Amend	7-1-2008
410-125-0600	7-1-2008	Amend	7-1-2008
410-125-0720	7-1-2008	Amend	7-1-2008
410-127-0060	1-1-2008	Amend	1-1-2008
410-129-0070	1-1-2008	Amend	1-1-2008
410-129-0200	1-1-2008	Amend	1-1-2008
410-130-0000	7-1-2008	Amend	7-1-2008
410-130-0180	7-1-2008	Amend	7-1-2008
410-130-0190	7-1-2008	Amend	7-1-2008
410-130-0200	12-20-2007	Amend(T)	2-1-2008
410-130-0200	5-1-2008	Amend	6-1-2008
410-130-0200	7-1-2008	Amend	7-1-2008
410-130-0220	7-1-2008	Amend	7-1-2008
410-130-0255	7-1-2008	Amend	7-1-2008
410-130-0580	12-20-2007	Amend(T)	2-1-2008
410-130-0580	5-1-2008	Amend	6-1-2008
410-130-0610	4-1-2008	Amend(T)	5-1-2008
410-130-0610	7-1-2008	Amend	7-1-2008
410-130-0680	7-1-2008	Amend	7-1-2008
410-140-0040	7-1-2008	Amend	7-1-2008
410-140-0050	7-1-2008	Amend	7-1-2008
410-140-0160	7-1-2008	Amend	7-1-2008
410-140-0260	7-1-2008	Amend	7-1-2008
410-140-0320	7-1-2008	Amend	7-1-2008
410-140-0400	7-1-2008	Amend	7-1-2008
410-141-0180	1-1-2008	Amend	1-1-2008
410-141-0260	7-1-2008	Amend	7-1-2008
410-141-0261	7-1-2008	Amend	7-1-2008
410-141-0262	7-1-2008	Amend	7-1-2008
410-141-0263	7-1-2008	Amend	7-1-2008
410-141-0264	7-1-2008	Amend	7-1-2008
410-141-0265	7-1-2008	Amend	7-1-2008
410-141-0480	1-1-2008	Amend	1-1-2008
410-141-0520	12-20-2007	Amend(T)	2-1-2008
410-141-0520	3-27-2008	Amend	5-1-2008
410-141-0520	4-1-2008	Amend(T)	5-1-2008
410-141-0520	7-1-2008	Amend	7-1-2008
410-141-0520(T)	12-20-2007	Suspend	2-1-2008
410-142-0020	1-1-2008	Amend	1-1-2008
410-146-0000	1-1-2008	Amend	1-1-2008
410-146-0020	1-1-2008	Amend	1-1-2008
410-146-0021	1-1-2008	Amend	1-1-2008
410-146-0025	1-1-2008	Repeal	1-1-2008
410-146-0040	1-1-2008	Amend	1-1-2008
410-146-0060	1-1-2008	Amend	1-1-2008
410-146-0075	1-1-2008	Amend	1-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008
410-146-0080	1-1-2008	Amend	1-1-2008
410-146-0100	1-1-2008	Amend	1-1-2008
410-146-0120	1-1-2008	Amend	1-1-2008
410-146-0130	1-1-2008	Amend	1-1-2008
410-146-0140	1-1-2008	Amend	1-1-2008
410-146-0160	1-1-2008	Amend	1-1-2008
410-146-0180	1-1-2008	Repeal	1-1-2008
410-146-0200	1-1-2008	Amend	1-1-2008
410-146-0200	7-1-2008	Amend	7-1-2008
410-146-0220	1-1-2008	Amend	1-1-2008
410-146-0240	1-1-2008	Amend	1-1-2008
410-146-0340	1-1-2008	Amend	1-1-2008
410-146-0380	1-1-2008	Amend	1-1-2008
410-146-0380	7-1-2008	Amend	7-1-2008
410-146-0400	1-1-2008	Repeal	1-1-2008
410-146-0420	1-1-2008	Repeal	1-1-2008
410-146-0440	1-1-2008	Amend	1-1-2008
410-146-0440	7-1-2008	Amend	7-1-2008
410-146-0460	1-1-2008	Amend	1-1-2008
410-147-0040	7-1-2008	Amend	7-1-2008
410-147-0080	7-1-2008	Amend	7-1-2008
410-147-0125	7-1-2008	Amend	7-1-2008
410-147-0280	7-1-2008	Amend	7-1-2008
410-147-0320	7-1-2008	Amend	7-1-2008
410-147-0340	7-1-2008	Amend	7-1-2008
410-147-0360	7-1-2008	Amend	7-1-2008
410-147-0365	1-1-2008	Amend	1-1-2008
410-147-0460	7-1-2008	Amend	7-1-2008
410-148-0060	7-1-2008	Amend	7-1-2008
410-148-0140	7-1-2008	Amend	7-1-2008
411-027-0000	6-1-2008	Am. & Ren.	7-1-2008
411-027-0005	6-1-2008	Adopt	7-1-2008
411-027-0025	6-1-2008	Amend	7-1-2008
411-027-0050	6-1-2008	Amend	7-1-2008
411-027-0075	6-1-2008	Amend	7-1-2008
411-027-0150	6-1-2008	Amend	7-1-2008
411-027-0200	6-1-2008	Repeal	7-1-2008
411-030-0020	4-1-2008	Amend(T)	5-1-2008
411-030-0040	4-1-2008	Amend(T)	5-1-2008
411-030-0050	4-1-2008	Amend(T)	5-1-2008
411-030-0070	4-1-2008	Amend(T)	5-1-2008
411-030-0100	4-1-2008	Adopt(T)	5-1-2008
411-031-0040	4-29-2008	Amend	6-1-2008
411-031-0040(T)	4-29-2008	Repeal	6-1-2008
411-036-0000	4-1-2008	Suspend	5-1-2008
411-036-0010	4-1-2008	Suspend	5-1-2008
411-036-0020	4-1-2008	Suspend	5-1-2008
411-036-0030	4-1-2008	Suspend	5-1-2008
411-036-0040	4-1-2008	Suspend	5-1-2008
411-036-0045	4-1-2008	Suspend	5-1-2008
411-036-0050	4-1-2008	Suspend	5-1-2008
411-036-0060	4-1-2008	Suspend	5-1-2008
411-036-0070	4-1-2008	Suspend	5-1-2008

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411-036-0080	4-1-2008	Suspend	5-1-2008
411-036-0090	4-1-2008	Suspend	5-1-2008
411-036-0100	4-1-2008	Suspend	5-1-2008
411-036-0110	4-1-2008	Suspend	5-1-2008
411-036-0120	4-1-2008	Suspend	5-1-2008
411-036-0130	4-1-2008	Suspend	5-1-2008
411-036-0140	4-1-2008	Suspend	5-1-2008
411-070-0005	3-1-2008	Amend	4-1-2008
411-070-0005(T)	3-1-2008	Repeal	4-1-2008
411-070-0027	3-1-2008	Amend	4-1-2008
411-070-0027(T)	3-1-2008	Repeal	4-1-2008
411-070-0035	3-1-2008	Amend	4-1-2008
411-070-0035(T)	3-1-2008	Repeal	4-1-2008
411-070-0045	3-1-2008	Amend	4-1-2008
411-070-0085	3-1-2008	Amend	4-1-2008
411-070-0085(T)	3-1-2008	Repeal	4-1-2008
411-070-0091	3-1-2008	Amend	4-1-2008
411-070-0091(T)	3-1-2008	Repeal	4-1-2008
411-070-0095	3-1-2008	Amend	4-1-2008
411-070-0095(T)	3-1-2008	Repeal	4-1-2008
411-070-0359	3-1-2008	Amend	4-1-2008
411-070-0359(T)	3-1-2008	Repeal	4-1-2008
411-070-0428	3-1-2008	Repeal	4-1-2008
411-070-0442	3-1-2008	Amend	4-1-2008
411-070-0442(T)	3-1-2008	Repeal	4-1-2008
411-070-0452	3-1-2008	Amend	4-1-2008
411-070-0452(T)	3-1-2008	Repeal	4-1-2008
411-070-0462	3-1-2008	Repeal	4-1-2008
411-070-0465	3-1-2008	Amend	4-1-2008
411-070-0465(T)	3-1-2008	Repeal	4-1-2008
411-085-0005	3-1-2008	Amend(T)	3-1-2008
411-085-0200	3-6-2008	Amend	4-1-2008
411-085-0310	3-6-2008	Amend	4-1-2008
411-086-0100	3-1-2008	Amend(T)	3-1-2008
411-086-0200	3-6-2008	Amend	4-1-2008
411-088-0070	3-6-2008	Amend	4-1-2008
411-330-0020	12-28-2007	Amend	2-1-2008
411-330-0020(T)	12-28-2007	Repeal	2-1-2008
411-330-0030	12-28-2007	Amend	2-1-2008
411-330-0030(T)	12-28-2007	Repeal	2-1-2008
411-340-0020	1-1-2008	Amend(T)	2-1-2008
411-340-0060	1-1-2008	Amend(T)	2-1-2008
411-340-0070	1-1-2008	Amend(T)	2-1-2008
411-340-0130	1-1-2008	Amend(T)	2-1-2008
411-340-0150	1-1-2008	Amend(T)	2-1-2008
411-340-0170	1-1-2008	Amend(T)	2-1-2008
411-355-0000	4-15-2008	Adopt(T)	5-1-2008
411-355-0010	4-15-2008	Adopt(T)	5-1-2008
411-355-0020	4-15-2008	Adopt(T)	5-1-2008
411-355-0030	4-15-2008	Adopt(T)	5-1-2008
411-355-0040	4-15-2008	Adopt(T)	5-1-2008
411-355-0050	4-15-2008	Adopt(T)	5-1-2008
411-355-0060	4-15-2008	Adopt(T)	5-1-2008
411-355-0070	4-15-2008	Adopt(T)	5-1-2008
411-355-0080	4-15-2008	Adopt(T)	5-1-2008
411-355-0090	4-15-2008	Adopt(T)	5-1-2008
411-355-0100	4-15-2008	Adopt(T)	5-1-2008
411-355-0110	4-15-2008	Adopt(T)	5-1-2008
411-355-0120	4-15-2008	Adopt(T)	5-1-2008
413-010-0400	12-1-2007	Amend	1-1-2008
413-010-0410	12-1-2007	Amend	1-1-2008
413-010-0420	12-1-2007	Amend	1-1-2008
413-010-0430	12-1-2007	Amend	1-1-2008
413-010-0440	12-1-2007	Amend	1-1-2008
413-010-0450	12-1-2007	Repeal	1-1-2008
413-010-0460	12-1-2007	Repeal	1-1-2008
413-010-0470	12-1-2007	Repeal	1-1-2008
413-010-0480	12-1-2007	Amend	1-1-2008
413-010-0490	12-1-2007	Repeal	1-1-2008
413-015-0100	12-3-2007	Amend(T)	1-1-2008
413-015-0100	4-1-2008	Amend	5-1-2008
413-015-0110	4-1-2008	Amend	5-1-2008
413-015-0115	12-3-2007	Amend(T)	1-1-2008
413-015-0115	1-1-2008	Amend(T)	2-1-2008
413-015-0115	4-1-2008	Amend	5-1-2008
413-015-0115(T)	12-3-2007	Suspend	1-1-2008
413-015-0115(T)	1-1-2008	Suspend	2-1-2008
413-015-0205	12-3-2007	Amend(T)	1-1-2008
413-015-0205	1-1-2008	Amend(T)	2-1-2008
413-015-0205	4-1-2008	Amend	5-1-2008
413-015-0205(T)	1-1-2008	Suspend	2-1-2008
413-015-0210	1-1-2008	Amend(T)	2-1-2008
413-015-0211	1-1-2008	Amend(T)	2-1-2008
413-015-0212	1-1-2008	Amend(T)	2-1-2008
413-015-0215	1-1-2008	Amend(T)	2-1-2008
413-015-0220	1-1-2008	Amend(T)	2-1-2008
413-015-0405	1-1-2008	Amend(T)	2-1-2008
413-015-0415	1-1-2008	Amend(T)	2-1-2008
413-015-0415	4-1-2008	Amend	5-1-2008
413-015-0415(T)	1-1-2008	Suspend	2-1-2008
413-015-0420	4-1-2008	Amend	5-1-2008
413-015-0520	1-1-2008	Adopt(T)	2-1-2008
413-015-0525	1-1-2008	Adopt(T)	2-1-2008
413-015-0530	1-1-2008	Adopt(T)	2-1-2008
413-015-0535	1-1-2008	Adopt(T)	2-1-2008
413-015-0540	1-1-2008	Adopt(T)	2-1-2008
413-015-0545	1-1-2008	Adopt(T)	2-1-2008
413-015-0550	1-1-2008	Adopt(T)	2-1-2008
413-015-0555	1-1-2008	Adopt(T)	2-1-2008
413-015-0560	1-1-2008	Adopt(T)	2-1-2008
413-015-0565	1-1-2008	Adopt(T)	2-1-2008
413-015-1000	1-1-2008	Amend(T)	2-1-2008
413-050-0200	4-1-2008	Amend	5-1-2008
413-050-0200(T)	4-1-2008	Repeal	5-1-2008
413-050-0210	4-1-2008	Amend	5-1-2008
413-050-0210(T)	4-1-2008	Repeal	5-1-2008
413-050-0220	4-1-2008	Amend	5-1-2008
413-050-0220(T)	4-1-2008	Repeal	5-1-2008
413-050-0230	4-1-2008	Amend	5-1-2008
413-050-0230(T)	4-1-2008	Repeal	5-1-2008
413-050-0235	4-1-2008	Adopt	5-1-2008
413-050-0235(T)	4-1-2008	Repeal	5-1-2008

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413-050-0250	4-1-2008	Repeal	5-1-2008
413-050-0260	4-1-2008	Repeal	5-1-2008
413-050-0270	4-1-2008	Repeal	5-1-2008
413-050-0280	4-1-2008	Amend	5-1-2008
413-050-0280(T)	4-1-2008	Repeal	5-1-2008
413-050-0290	4-1-2008	Repeal	5-1-2008
413-050-0300	4-1-2008	Repeal	5-1-2008
413-070-0600	1-1-2008	Amend(T)	2-1-2008
413-070-0620	1-1-2008	Amend(T)	2-1-2008
413-070-0625	1-1-2008	Amend(T)	2-1-2008
413-070-0640	1-1-2008	Amend(T)	2-1-2008
413-070-0810	1-1-2008	Amend(T)	2-1-2008
413-070-0860	1-1-2008	Amend(T)	2-1-2008
413-070-0880	1-1-2008	Amend(T)	2-1-2008
413-090-0010	1-1-2008	Amend(T)	2-1-2008
413-100-0040	1-1-2008	Suspend	2-1-2008
413-100-0900	1-1-2008	Adopt(T)	2-1-2008
413-100-0905	1-1-2008	Adopt(T)	2-1-2008
413-100-0910	1-1-2008	Adopt(T)	2-1-2008
413-100-0915	1-1-2008	Adopt(T)	2-1-2008
413-100-0920	1-1-2008	Adopt(T)	2-1-2008
413-100-0925	1-1-2008	Adopt(T)	2-1-2008
413-100-0930	1-1-2008	Adopt(T)	2-1-2008
413-100-0935	1-1-2008	Adopt(T)	2-1-2008
413-100-0940	1-1-2008	Adopt(T)	2-1-2008
413-120-0060	12-12-2007	Amend(T)	1-1-2008
413-120-0060	6-1-2008	Amend	7-1-2008
413-120-0060(T)	6-1-2008	Repeal	7-1-2008
413-120-0400	1-1-2008	Amend(T)	2-1-2008
413-120-0400	5-15-2008	Amend	6-1-2008
413-120-0400(T)	5-15-2008	Repeal	6-1-2008
413-120-0410	1-1-2008	Amend(T)	2-1-2008
413-120-0410	5-15-2008	Amend	6-1-2008
413-120-0410(T)	5-15-2008	Repeal	6-1-2008
413-120-0420	1-1-2008	Amend(T)	2-1-2008
413-120-0420	5-15-2008	Amend	6-1-2008
413-120-0420(T)	5-15-2008	Repeal	6-1-2008
413-120-0430	1-1-2008	Suspend	2-1-2008
413-120-0430	5-15-2008	Repeal	6-1-2008
413-120-0440	1-1-2008	Amend(T)	2-1-2008
413-120-0440	5-15-2008	Amend	6-1-2008
413-120-0440(T)	5-15-2008	Repeal	6-1-2008
413-120-0450	1-1-2008	Amend(T)	2-1-2008
413-120-0450	5-15-2008	Amend	6-1-2008
413-120-0450(T)	5-15-2008	Repeal	6-1-2008
413-120-0455	1-1-2008	Amend(T)	2-1-2008
413-120-0455	5-15-2008	Amend	6-1-2008
413-120-0455(T)	5-15-2008	Repeal	6-1-2008
413-120-0460	1-1-2008	Amend(T)	2-1-2008
413-120-0460	5-15-2008	Amend	6-1-2008
413-120-0460(T)	5-15-2008	Repeal	6-1-2008
413-120-0470	1-1-2008	Amend(T)	2-1-2008
413-120-0470	5-15-2008	Amend	6-1-2008
413-120-0470(T)	5-15-2008	Repeal	6-1-2008
413-200-0210	1-1-2008	Amend(T)	2-1-2008
413-200-0220	1-1-2008	Amend(T)	2-1-2008
413-200-0404	1-1-2008	Adopt(T)	2-1-2008
413-200-0409	1-1-2008	Adopt(T)	2-1-2008
413-200-0414	1-1-2008	Adopt(T)	2-1-2008
413-200-0419	1-1-2008	Adopt(T)	2-1-2008
413-200-0424	1-1-2008	Adopt(T)	2-1-2008
415-010-0005	12-5-2007	Adopt(T)	1-1-2008
415-010-0005	2-12-2008	Suspend	3-1-2008
415-051-0045	12-11-2007	Amend	1-1-2008
416-001-0005	6-9-2008	Amend	7-1-2008
423-010-0023	5-30-2008	Amend(T)	7-1-2008
423-010-0024	4-16-2008	Amend	6-1-2008
436-001-0003	7-1-2008	Amend	7-1-2008
436-001-0004	7-1-2008	Amend	7-1-2008
436-001-0005	7-1-2008	Amend	7-1-2008
436-001-0009	7-1-2008	Amend	7-1-2008
436-001-0019	7-1-2008	Amend	7-1-2008
436-001-0023	7-1-2008	Amend	7-1-2008
436-001-0027	7-1-2008	Amend	7-1-2008
436-001-0030	7-1-2008	Amend	7-1-2008
436-001-0170	7-1-2008	Amend	7-1-2008
436-001-0240	7-1-2008	Amend	7-1-2008
436-001-0246	7-1-2008	Amend	7-1-2008
436-001-0252	7-1-2008	Amend	7-1-2008
436-001-0265	7-1-2008	Amend	7-1-2008
436-001-0296	7-1-2008	Amend	7-1-2008
436-001-0300	7-1-2008	Amend	7-1-2008
436-009-0004	7-1-2008	Amend	7-1-2008
436-009-0008	7-1-2008	Amend	7-1-2008
436-009-0010	7-1-2008	Amend	7-1-2008
436-009-0015	7-1-2008	Amend	7-1-2008
436-009-0020	7-1-2008	Amend	7-1-2008
436-009-0030	7-1-2008	Amend	7-1-2008
436-009-0040	7-1-2008	Amend	7-1-2008
436-009-0070	7-1-2008	Amend	7-1-2008
436-009-0090	7-1-2008	Amend	7-1-2008
436-010-0008	6-30-2008	Amend	7-1-2008
436-010-0210	1-2-2008	Amend(T)	1-1-2008
436-010-0210	6-30-2008	Amend	7-1-2008
436-010-0220	1-2-2008	Amend(T)	1-1-2008
436-010-0220	6-30-2008	Amend	7-1-2008
436-010-0230	6-30-2008	Amend	7-1-2008
436-010-0240	6-30-2008	Amend	7-1-2008
436-010-0280	1-2-2008	Amend(T)	1-1-2008
436-010-0280	6-30-2008	Amend	7-1-2008
436-010-0330	6-30-2008	Amend	7-1-2008
436-015-0005	7-1-2008	Amend	7-1-2008
436-015-0009	7-1-2008	Amend	7-1-2008
436-015-0010	7-1-2008	Amend	7-1-2008
436-015-0020	7-1-2008	Amend	7-1-2008
436-015-0030	7-1-2008	Amend	7-1-2008
436-015-0040	7-1-2008	Amend	7-1-2008
436-015-0110	7-1-2008	Amend	7-1-2008
436-030-0003	7-1-2008	Amend	7-1-2008
436-035-0500	12-28-2007	Amend(T)	2-1-2008
436-040-0003	7-1-2008	Amend	7-1-2008

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436-045-0003	7-1-2008	Amend	7-1-2008
436-050-0002	7-1-2008	Amend	7-1-2008
436-050-0003	7-1-2008	Amend	7-1-2008
436-050-0005	7-1-2008	Amend	7-1-2008
436-050-0008	7-1-2008	Amend	7-1-2008
436-050-0025	7-1-2008	Adopt	7-1-2008
436-050-0045	7-1-2008	Amend	7-1-2008
436-050-0050	7-1-2008	Amend	7-1-2008
436-050-0100	7-1-2008	Amend	7-1-2008
436-050-0110	7-1-2008	Amend	7-1-2008
436-050-0120	7-1-2008	Amend	7-1-2008
436-050-0170	7-1-2008	Amend	7-1-2008
436-050-0175	7-1-2008	Amend	7-1-2008
436-050-0190	7-1-2008	Amend	7-1-2008
436-050-0200	7-1-2008	Amend	7-1-2008
436-050-0210	7-1-2008	Amend	7-1-2008
436-050-0220	7-1-2008	Amend	7-1-2008
436-110-0240	7-1-2008	Amend	7-1-2008
436-110-0320	7-1-2008	Amend	7-1-2008
436-110-0330	7-1-2008	Amend	7-1-2008
436-160-0020	7-1-2008	Amend	7-1-2008
436-160-0070	7-1-2008	Amend	7-1-2008
436-160-0090	7-1-2008	Amend	7-1-2008
436-160-0330	7-1-2008	Amend	7-1-2008
436-160-0340	7-1-2008	Amend	7-1-2008
436-160-0350	7-1-2008	Amend	7-1-2008
436-160-0360	7-1-2008	Amend	7-1-2008
436-160-0410	7-1-2008	Amend	7-1-2008
436-160-0430	7-1-2008	Amend	7-1-2008
437-001-0015	3-1-2008	Amend	4-1-2008
437-001-0205	1-1-2008	Amend	1-1-2008
437-001-0215	1-1-2008	Amend	1-1-2008
437-001-0220	1-1-2008	Amend	1-1-2008
437-001-0240	1-1-2008	Amend	1-1-2008
437-001-0255	1-1-2008	Amend	1-1-2008
437-001-0295	12-3-2007	Amend	1-1-2008
437-001-0700	1-1-2008	Amend	2-1-2008
437-001-0706	1-1-2008	Adopt	2-1-2008
437-001-0740	1-1-2008	Amend	2-1-2008
437-002-0005	5-30-2008	Amend	7-1-2008
437-002-0060	5-30-2008	Amend	7-1-2008
437-002-0080	5-30-2008	Amend	7-1-2008
437-002-0100	12-3-2007	Amend	1-1-2008
437-002-0100	5-30-2008	Amend	7-1-2008
437-002-0120	5-15-2008	Amend	6-1-2008
437-002-0122	12-3-2007	Adopt	1-1-2008
437-002-0140	5-30-2008	Amend	7-1-2008
437-002-0142	5-1-2008	Amend	5-1-2008
437-002-0260	5-30-2008	Amend	7-1-2008
437-002-0280	5-30-2008	Amend	7-1-2008
437-002-0382	7-1-2008	Amend	6-1-2008
437-003-0001	5-15-2008	Amend	6-1-2008
437-003-1000	7-1-2008	Amend	6-1-2008
437-004-1005	5-15-2008	Amend	6-1-2008
437-004-1120	5-1-2008	Amend	5-1-2008
437-004-2230	5-30-2008	Amend	7-1-2008
437-005-0001	5-15-2008	Amend	6-1-2008
437-005-0002	5-15-2008	Amend	6-1-2008
437-005-0003	5-15-2008	Amend	6-1-2008
437-007-0010	7-1-2008	Amend	4-1-2008
437-007-0025	7-1-2008	Amend	4-1-2008
437-007-0685	7-1-2008	Repeal	4-1-2008
437-007-0775	3-5-2008	Amend	4-1-2008
437-007-0780	3-5-2008	Amend	4-1-2008
437-007-1500	7-1-2008	Adopt	4-1-2008
437-007-1505	7-1-2008	Adopt	4-1-2008
437-007-1510	7-1-2008	Adopt	4-1-2008
437-007-1520	7-1-2008	Adopt	4-1-2008
437-007-1525	7-1-2008	Adopt	4-1-2008
437-007-1530	7-1-2008	Adopt	4-1-2008
437-007-1535	7-1-2008	Adopt	4-1-2008
438-005-0046	1-1-2008	Amend	1-1-2008
438-005-0050	1-1-2008	Amend	1-1-2008
438-005-0055	1-1-2008	Amend	1-1-2008
438-006-0020	1-1-2008	Amend	1-1-2008
438-006-0100	1-1-2008	Amend	1-1-2008
438-009-0005	1-1-2008	Amend	1-1-2008
438-009-0010	1-1-2008	Amend	1-1-2008
438-009-0020	1-1-2008	Amend	1-1-2008
438-009-0022	1-1-2008	Amend	1-1-2008
438-009-0025	1-1-2008	Amend	1-1-2008
438-009-0028	1-1-2008	Amend	1-1-2008
438-009-0030	1-1-2008	Amend	1-1-2008
438-009-0035	1-1-2008	Amend	1-1-2008
438-011-0020	1-1-2008	Amend	1-1-2008
438-012-0035	1-1-2008	Amend	1-1-2008
438-015-0005	1-1-2008	Amend	1-1-2008
438-015-0019	1-1-2008	Adopt	1-1-2008
438-015-0022	1-1-2008	Adopt	1-1-2008
438-015-0080	1-1-2008	Amend	1-1-2008
438-019-0030	1-1-2008	Amend	1-1-2008
441-500-0020	1-28-2008	Amend	3-1-2008
441-500-0030	1-28-2008	Amend	3-1-2008
441-505-3045	4-18-2008	Adopt(T)	6-1-2008
441-710-0500	1-28-2008	Amend	3-1-2008
441-720-0385	4-18-2008	Adopt(T)	6-1-2008
441-730-0000	12-27-2007	Amend	1-1-2008
441-730-0010	12-27-2007	Amend	1-1-2008
441-730-0015	12-27-2007	Amend	1-1-2008
441-730-0030	1-28-2008	Amend	3-1-2008
441-730-0245	4-18-2008	Adopt(T)	6-1-2008
441-730-0270	12-27-2007	Amend	1-1-2008
441-730-0275	12-27-2007	Amend	1-1-2008
441-730-0310	12-27-2007	Amend	1-1-2008
441-755-0000	11-30-2007	Adopt	1-1-2008
441-755-0010	11-30-2007	Adopt	1-1-2008
441-755-0100	11-30-2007	Adopt	1-1-2008
441-755-0110	11-30-2007	Adopt	1-1-2008
441-755-0120	11-30-2007	Adopt	1-1-2008
441-755-0130	11-30-2007	Adopt	1-1-2008
441-755-0140	11-30-2007	Adopt	1-1-2008

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441-755-0160	11-30-2007	Adopt	1-1-2008
441-755-0170	11-30-2007	Adopt	1-1-2008
441-755-0200	11-30-2007	Adopt	1-1-2008
441-755-0210	11-30-2007	Adopt	1-1-2008
441-755-0220	11-30-2007	Adopt	1-1-2008
441-755-0300	11-30-2007	Adopt	1-1-2008
441-755-0310	11-30-2007	Adopt	1-1-2008
441-850-0040	4-18-2008	Adopt(T)	6-1-2008
441-860-0010	5-7-2008	Amend	6-1-2008
441-865-0022	5-7-2008	Adopt(T)	6-1-2008
441-870-0030	5-7-2008	Amend	6-1-2008
441-870-0080	5-7-2008	Adopt	6-1-2008
442-005-0250	5-19-2008	Amend(T)	7-1-2008
442-005-0270	3-31-2008	Amend(T)	5-1-2008
443-002-0010	1-2-2008	Amend	2-1-2008
443-002-0030	1-2-2008	Amend(T)	2-1-2008
443-002-0030	4-15-2008	Amend	5-1-2008
443-002-0030	6-10-2008	Amend(T)	7-1-2008
443-002-0060	1-2-2008	Amend	2-1-2008
443-002-0070	1-2-2008	Amend	2-1-2008
443-002-0095	1-2-2008	Repeal	2-1-2008
443-002-0100	1-2-2008	Amend	2-1-2008
459-001-0005	4-4-2008	Amend	5-1-2008
459-001-0030	4-2-2008	Amend	5-1-2008
459-001-0032	4-2-2008	Adopt	5-1-2008
459-001-0035	4-2-2008	Amend	5-1-2008
459-001-0040	4-2-2008	Amend	5-1-2008
459-005-0591	5-21-2008	Amend(T)	7-1-2008
459-005-0595	5-21-2008	Amend(T)	7-1-2008
459-007-0110	11-23-2007	Amend	1-1-2008
459-007-0160	11-23-2007	Adopt	1-1-2008
459-007-0290	11-23-2007	Amend	1-1-2008
459-007-0530	11-23-2007	Amend	1-1-2008
459-009-0084	11-23-2007	Amend	1-1-2008
459-009-0085	11-23-2007	Amend	1-1-2008
459-009-0090	11-23-2007	Amend	1-1-2008
459-009-0130	4-2-2008	Amend	5-1-2008
459-010-0003	11-23-2007	Amend	1-1-2008
459-010-0014	11-23-2007	Amend	1-1-2008
459-010-0014	4-2-2008	Amend(T)	5-1-2008
459-010-0014	5-21-2008	Amend	7-1-2008
459-010-0035	11-23-2007	Amend	1-1-2008
459-010-0042	4-2-2008	Amend(T)	5-1-2008
459-010-0042	5-21-2008	Amend	7-1-2008
459-010-0055	11-23-2007	Amend	1-1-2008
459-011-0050	11-23-2007	Amend	1-1-2008
459-013-0110	11-23-2007	Amend	1-1-2008
459-015-0055	4-2-2008	Amend	5-1-2008
459-017-0060	11-23-2007	Amend	1-1-2008
459-045-0030	11-23-2007	Amend	1-1-2008
459-050-0040	4-2-2008	Amend	5-1-2008
459-050-0080	11-23-2007	Amend	1-1-2008
459-050-0090	5-21-2008	Amend(T)	7-1-2008
459-050-0220	11-23-2007	Amend	1-1-2008
459-070-0001	11-23-2007	Amend	1-1-2008
459-075-0010	11-23-2007	Amend	1-1-2008
459-075-0020	11-23-2007	Adopt	1-1-2008
459-075-0150	11-23-2007	Amend	1-1-2008
459-080-0020	11-23-2007	Adopt	1-1-2008
459-080-0250	11-23-2007	Amend	1-1-2008
461-001-0000	1-1-2008	Amend	2-1-2008
461-001-0000	1-1-2008	Amend(T)	2-1-2008
461-001-0000	3-1-2008	Amend	4-1-2008
461-001-0000	4-1-2008	Amend	5-1-2008
461-001-0000(T)	1-1-2008	Repeal	2-1-2008
461-001-0000(T)	3-1-2008	Repeal	4-1-2008
461-001-0025	3-1-2008	Amend	4-1-2008
461-001-0025(T)	3-1-2008	Repeal	4-1-2008
461-001-0035	1-1-2008	Amend	2-1-2008
461-006-0452	4-1-2008	Am. & Ren.	5-1-2008
461-025-0310	3-1-2008	Amend	4-1-2008
461-025-0310	4-1-2008	Amend	5-1-2008
461-025-0310(T)	3-1-2008	Repeal	4-1-2008
461-025-0350	1-1-2008	Amend(T)	2-1-2008
461-025-0350	4-1-2008	Amend	5-1-2008
461-025-0350(T)	4-1-2008	Repeal	5-1-2008
461-101-0010	3-1-2008	Amend	4-1-2008
461-101-0010(T)	3-1-2008	Repeal	4-1-2008
461-105-0010	3-1-2008	Amend	4-1-2008
461-105-0010(T)	3-1-2008	Repeal	4-1-2008
461-110-0630	3-1-2008	Amend	4-1-2008
461-110-0630(T)	3-1-2008	Repeal	4-1-2008
461-115-0030	3-1-2008	Amend	4-1-2008
461-115-0030	4-17-2008	Amend(T)	6-1-2008
461-115-0030(T)	3-1-2008	Repeal	4-1-2008
461-115-0050	1-28-2008	Amend(T)	3-1-2008
461-115-0190	3-1-2008	Amend	4-1-2008
461-115-0190(T)	3-1-2008	Repeal	4-1-2008
461-115-0430	3-1-2008	Amend	4-1-2008
461-115-0430(T)	3-1-2008	Repeal	4-1-2008
461-115-0610	4-1-2008	Amend	5-1-2008
461-115-0700	1-1-2008	Amend	2-1-2008
461-115-0705	4-1-2008	Amend	5-1-2008
461-115-0715	3-1-2008	Adopt	4-1-2008
461-115-0715(T)	3-1-2008	Repeal	4-1-2008
461-120-0120	1-30-2008	Amend(T)	3-1-2008
461-120-0125	1-30-2008	Amend(T)	3-1-2008
461-120-0125	2-22-2008	Amend(T)	4-1-2008
461-120-0310	12-1-2007	Amend(T)	1-1-2008
461-120-0310	3-1-2008	Amend	4-1-2008
461-120-0310(T)	12-1-2007	Suspend	1-1-2008
461-120-0310(T)	3-1-2008	Repeal	4-1-2008
461-120-0340	3-1-2008	Amend	4-1-2008
461-120-0340(T)	3-1-2008	Repeal	4-1-2008
461-120-0345	3-1-2008	Amend	4-1-2008
461-120-0345(T)	3-1-2008	Repeal	4-1-2008
461-125-0130	3-1-2008	Amend	4-1-2008
461-125-0130(T)	3-1-2008	Repeal	4-1-2008
461-125-0260	3-1-2008	Adopt	4-1-2008
461-125-0260(T)	3-1-2008	Repeal	4-1-2008
461-125-0310	4-1-2008	Amend	5-1-2008

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461-130-0305	3-1-2008	Amend	4-1-2008
461-130-0305(T)	3-1-2008	Repeal	4-1-2008
461-130-0310	3-1-2008	Amend	4-1-2008
461-130-0310(T)	3-1-2008	Repeal	4-1-2008
461-130-0315	3-1-2008	Amend	4-1-2008
461-130-0315(T)	3-1-2008	Repeal	4-1-2008
461-130-0323	3-1-2008	Adopt	4-1-2008
461-130-0323(T)	3-1-2008	Repeal	4-1-2008
461-130-0325	3-1-2008	Amend	4-1-2008
461-130-0325(T)	3-1-2008	Repeal	4-1-2008
461-130-0327	3-1-2008	Amend	4-1-2008
461-130-0327(T)	3-1-2008	Repeal	4-1-2008
461-130-0330	3-1-2008	Amend	4-1-2008
461-130-0330(T)	3-1-2008	Repeal	4-1-2008
461-130-0335	3-1-2008	Amend	4-1-2008
461-130-0335(T)	3-1-2008	Repeal	4-1-2008
461-135-0010	3-1-2008	Amend	4-1-2008
461-135-0010(T)	3-1-2008	Repeal	4-1-2008
461-135-0070	3-1-2008	Amend	4-1-2008
461-135-0070(T)	3-1-2008	Repeal	4-1-2008
461-135-0075	3-1-2008	Amend	4-1-2008
461-135-0075(T)	3-1-2008	Repeal	4-1-2008
461-135-0082	1-30-2008	Amend(T)	3-1-2008
461-135-0082	2-22-2008	Amend(T)	4-1-2008
461-135-0085	3-1-2008	Amend	4-1-2008
461-135-0085(T)	3-1-2008	Repeal	4-1-2008
461-135-0089	3-1-2008	Amend	4-1-2008
461-135-0089(T)	3-1-2008	Repeal	4-1-2008
461-135-0200	3-1-2008	Amend	4-1-2008
461-135-0200(T)	3-1-2008	Repeal	4-1-2008
461-135-0475	3-1-2008	Amend	4-1-2008
461-135-0475(T)	3-1-2008	Repeal	4-1-2008
461-135-0493	12-17-2007	Amend(T)	2-1-2008
461-135-0505	3-1-2008	Amend	4-1-2008
461-135-0505(T)	3-1-2008	Repeal	4-1-2008
461-135-0506	3-1-2008	Amend	4-1-2008
461-135-0506(T)	3-1-2008	Repeal	4-1-2008
461-135-0725	1-1-2008	Amend	2-1-2008
461-135-0750	4-7-2008	Amend(T)	5-1-2008
461-135-0780	1-1-2008	Amend	2-1-2008
461-135-0835	1-1-2008	Amend	2-1-2008
461-135-0900	1-30-2008	Amend(T)	3-1-2008
461-135-0900	2-22-2008	Amend(T)	4-1-2008
461-135-0910	4-1-2008	Amend	5-1-2008
461-135-1100	6-1-2008	Amend(T)	7-1-2008
461-135-1102	1-28-2008	Amend(T)	3-1-2008
461-135-1102	6-1-2008	Amend(T)	7-1-2008
461-135-1102(T)	6-1-2008	Suspend	7-1-2008
461-135-1125	1-28-2008	Adopt(T)	3-1-2008
461-135-1125	4-17-2008	Amend(T)	6-1-2008
461-135-1125(T)	4-17-2008	Suspend	6-1-2008
461-135-1175	4-1-2008	Amend	5-1-2008
461-135-1185(T)	3-1-2008	Repeal	4-1-2008
461-135-1195	3-1-2008	Adopt	4-1-2008
461-135-1250	3-1-2008	Adopt	4-1-2008
461-135-1250(T)	3-1-2008	Repeal	4-1-2008
461-140-0040	4-1-2008	Amend	5-1-2008
461-140-0220	1-1-2008	Amend	2-1-2008
461-145-0030	1-1-2008	Amend	2-1-2008
461-145-0080	3-1-2008	Amend	4-1-2008
461-145-0080	3-21-2008	Amend(T)	5-1-2008
461-145-0080(T)	3-1-2008	Repeal	4-1-2008
461-145-0108	1-1-2008	Amend	2-1-2008
461-145-0120	4-1-2008	Amend	5-1-2008
461-145-0180	1-1-2008	Repeal	2-1-2008
461-145-0220	1-1-2008	Amend	2-1-2008
461-145-0370	4-1-2008	Amend	5-1-2008
461-145-0410	3-1-2008	Amend	4-1-2008
461-145-0410(T)	3-1-2008	Repeal	4-1-2008
461-145-0450(T)	4-1-2008	Repeal	5-1-2008
461-145-0470	4-1-2008	Amend	5-1-2008
461-145-0490	4-1-2008	Amend	5-1-2008
461-145-0500	4-1-2008	Amend	5-1-2008
461-145-0505	4-1-2008	Amend	5-1-2008
461-145-0520	4-1-2008	Amend	5-1-2008
461-145-0530	4-1-2008	Amend	5-1-2008
461-145-0530	4-1-2008	Amend(T)	5-1-2008
461-145-0550	4-1-2008	Amend	5-1-2008
461-145-0580	1-1-2008	Amend	2-1-2008
461-145-0585	4-1-2008	Amend	5-1-2008
461-145-0910	4-1-2008	Amend	5-1-2008
461-150-0047	1-1-2008	Amend	2-1-2008
461-155-0150	3-1-2008	Amend	4-1-2008
461-155-0150(T)	3-1-2008	Repeal	4-1-2008
461-155-0180	1-24-2008	Amend(T)	3-1-2008
461-155-0235	1-24-2008	Amend(T)	3-1-2008
461-155-0250	1-1-2008	Amend	2-1-2008
461-155-0250	3-1-2008	Amend(T)	4-1-2008
461-155-0270	1-1-2008	Amend	2-1-2008
461-155-0290	3-1-2008	Amend(T)	4-1-2008
461-155-0290	4-1-2008	Amend	5-1-2008
461-155-0290(T)	4-1-2008	Repeal	5-1-2008
461-155-0291	3-1-2008	Amend(T)	4-1-2008
461-155-0291	4-1-2008	Amend	5-1-2008
461-155-0291(T)	4-1-2008	Repeal	5-1-2008
461-155-0295	3-1-2008	Amend(T)	4-1-2008
461-155-0295	4-1-2008	Amend	5-1-2008
461-155-0295(T)	4-1-2008	Repeal	5-1-2008
461-155-0300	1-1-2008	Amend	2-1-2008
461-155-0320	1-1-2008	Amend(T)	2-1-2008
461-155-0320	3-1-2008	Adopt	4-1-2008
461-155-0320(T)	3-1-2008	Repeal	4-1-2008
461-155-0670	3-1-2008	Amend	4-1-2008
461-155-0670(T)	3-1-2008	Repeal	4-1-2008
461-160-0030	4-1-2008	Amend	5-1-2008
461-160-0040	1-1-2008	Amend	2-1-2008
461-160-0055	1-1-2008	Amend	2-1-2008
461-160-0410	1-1-2008	Amend	2-1-2008
461-160-0415	1-1-2008	Amend	2-1-2008
461-160-0430	3-1-2008	Amend	4-1-2008

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461-160-0580	1-1-2008	Amend	2-1-2008
461-160-0620	1-1-2008	Amend	2-1-2008
461-160-0800	3-1-2008	Amend(T)	4-1-2008
461-160-0810	3-1-2008	Suspend	4-1-2008
461-160-0820	3-1-2008	Suspend	4-1-2008
461-160-0850	3-1-2008	Suspend	4-1-2008
461-160-0855	1-1-2008	Adopt	2-1-2008
461-165-0030	3-1-2008	Amend	4-1-2008
461-165-0030(T)	3-1-2008	Repeal	4-1-2008
461-170-0020	3-1-2008	Amend	4-1-2008
461-170-0020(T)	3-1-2008	Repeal	4-1-2008
461-170-0030	3-1-2008	Amend	4-1-2008
461-170-0030(T)	3-1-2008	Repeal	4-1-2008
461-170-0130	1-1-2008	Amend	2-1-2008
461-175-0050	4-1-2008	Amend	5-1-2008
461-175-0200	1-1-2008	Amend(T)	2-1-2008
461-175-0200	4-1-2008	Amend	5-1-2008
461-175-0200	4-7-2008	Amend(T)	5-1-2008
461-175-0200(T)	4-1-2008	Repeal	5-1-2008
461-175-0270	1-1-2008	Amend	2-1-2008
461-175-0340	1-1-2008	Amend(T)	2-1-2008
461-175-0340	4-1-2008	Amend	5-1-2008
461-175-0340(T)	4-1-2008	Repeal	5-1-2008
461-180-0010	3-1-2008	Amend	4-1-2008
461-180-0010(T)	3-1-2008	Repeal	4-1-2008
461-180-0020	3-1-2008	Amend	4-1-2008
461-180-0020(T)	3-1-2008	Repeal	4-1-2008
461-180-0070	3-1-2008	Amend	4-1-2008
461-180-0070(T)	3-1-2008	Repeal	4-1-2008
461-180-0081	3-1-2008	Amend	4-1-2008
461-180-0081(T)	3-1-2008	Repeal	4-1-2008
461-180-0085	1-1-2008	Amend	2-1-2008
461-190-0051	3-1-2008	Amend	4-1-2008
461-190-0151(T)	3-1-2008	Repeal	4-1-2008
461-190-0163	3-1-2008	Amend	4-1-2008
461-190-0163(T)	3-1-2008	Repeal	4-1-2008
461-190-0171	3-1-2008	Amend	4-1-2008
461-190-0171(T)	3-1-2008	Repeal	4-1-2008
461-190-0201	10-1-2007	Suspend	2-1-2008
461-190-0201	3-1-2008	Repeal	4-1-2008
461-190-0211	3-1-2008	Amend	4-1-2008
461-190-0211(T)	3-1-2008	Repeal	4-1-2008
461-190-0231	3-1-2008	Amend	4-1-2008
461-190-0231(T)	3-1-2008	Repeal	4-1-2008
461-190-0241	3-1-2008	Amend	4-1-2008
461-190-0241(T)	3-1-2008	Repeal	4-1-2008
461-190-0426	4-1-2008	Amend	5-1-2008
461-195-0501	1-1-2008	Amend	2-1-2008
461-195-0501	1-1-2008	Amend(T)	2-1-2008
461-195-0501	3-1-2008	Amend	4-1-2008
461-195-0501(T)	1-1-2008	Repeal	2-1-2008
461-195-0501(T)	3-1-2008	Repeal	4-1-2008
461-195-0511	1-1-2008	Amend	2-1-2008
461-195-0521	1-1-2008	Amend	2-1-2008
461-195-0521	4-1-2008	Amend	5-1-2008
461-195-0551	1-1-2008	Amend	2-1-2008
461-195-0551	1-1-2008	Amend(T)	2-1-2008
461-195-0551	3-1-2008	Amend	4-1-2008
461-195-0551(T)	1-1-2008	Repeal	2-1-2008
461-195-0551(T)	3-1-2008	Repeal	4-1-2008
461-195-0561	3-1-2008	Amend	4-1-2008
461-195-0561(T)	3-1-2008	Repeal	4-1-2008
461-195-0601	3-1-2008	Amend	4-1-2008
461-195-0601(T)	3-1-2008	Repeal	4-1-2008
462-160-0110	11-28-2007	Amend(T)	1-1-2008
462-160-0110	4-7-2008	Amend	5-1-2008
462-160-0120	11-28-2007	Amend(T)	1-1-2008
462-160-0120	4-7-2008	Amend	5-1-2008
462-160-0130	11-28-2007	Amend(T)	1-1-2008
462-160-0130	4-7-2008	Amend	5-1-2008
462-200-0630	12-6-2007	Repeal	1-1-2008
471-010-0020	4-29-2008	Amend	6-1-2008
471-010-0050	1-7-2008	Suspend	2-1-2008
471-010-0050	7-1-2008	Repeal	7-1-2008
471-010-0051	1-7-2008	Suspend	2-1-2008
471-010-0051	7-1-2008	Repeal	7-1-2008
471-010-0052	1-7-2008	Suspend	2-1-2008
471-010-0052	7-1-2008	Repeal	7-1-2008
471-010-0054	1-7-2008	Suspend	2-1-2008
471-010-0054	7-1-2008	Repeal	7-1-2008
471-010-0055	1-7-2008	Suspend	2-1-2008
471-010-0055	7-1-2008	Repeal	7-1-2008
471-010-0057	1-7-2008	Suspend	2-1-2008
471-010-0057	7-1-2008	Repeal	7-1-2008
471-010-0080	2-26-2008	Adopt(T)	4-1-2008
471-010-0080	7-1-2008	Adopt	7-1-2008
471-010-0085	2-26-2008	Adopt(T)	4-1-2008
471-010-0085	7-1-2008	Adopt	7-1-2008
471-010-0090	2-26-2008	Adopt(T)	4-1-2008
471-010-0090	7-1-2008	Adopt	7-1-2008
471-010-0100	2-26-2008	Adopt(T)	4-1-2008
471-010-0100	7-1-2008	Adopt	7-1-2008
471-010-0105	2-26-2008	Adopt(T)	4-1-2008
471-010-0105	7-1-2008	Adopt	7-1-2008
471-010-0110	2-26-2008	Adopt(T)	4-1-2008
471-010-0110	7-1-2008	Adopt	7-1-2008
471-010-0115	2-26-2008	Adopt(T)	4-1-2008
471-010-0115	7-1-2008	Adopt	7-1-2008
471-010-0120	2-26-2008	Adopt(T)	4-1-2008
471-010-0120	7-1-2008	Adopt	7-1-2008
471-010-0125	2-26-2008	Adopt(T)	4-1-2008
471-010-0125	7-1-2008	Adopt	7-1-2008
471-030-0050	12-3-2007	Amend	1-1-2008
471-030-0052	2-15-2008	Amend(T)	3-1-2008
471-030-0052	7-1-2008	Amend	7-1-2008
471-030-0215	4-24-2008	Adopt(T)	6-1-2008
471-041-0060	1-8-2008	Amend	2-1-2008
543-001-0005	1-17-2008	Amend	3-1-2008
571-040-0010	2-19-2008	Suspend	4-1-2008
571-040-0015	2-19-2008	Suspend	4-1-2008

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571-040-0020	2-19-2008	Suspend	4-1-2008
571-040-0030	2-19-2008	Suspend	4-1-2008
571-040-0040	2-19-2008	Suspend	4-1-2008
571-040-0050	2-19-2008	Suspend	4-1-2008
571-040-0060	2-19-2008	Suspend	4-1-2008
571-040-0070	2-19-2008	Suspend	4-1-2008
571-040-0080	2-19-2008	Suspend	4-1-2008
571-040-0100	2-19-2008	Suspend	4-1-2008
571-040-0201	2-19-2008	Suspend	4-1-2008
571-040-0251	2-19-2008	Suspend	4-1-2008
571-040-0261	2-19-2008	Suspend	4-1-2008
571-040-0380	2-19-2008	Suspend	4-1-2008
571-040-0382	2-19-2008	Suspend	4-1-2008
571-040-0390	2-19-2008	Suspend	4-1-2008
571-040-0400	2-19-2008	Suspend	4-1-2008
571-040-0410	2-19-2008	Suspend	4-1-2008
571-040-0420	2-19-2008	Suspend	4-1-2008
571-040-0430	2-19-2008	Suspend	4-1-2008
571-040-0440	2-19-2008	Suspend	4-1-2008
571-040-0450	2-19-2008	Suspend	4-1-2008
571-040-0460	2-19-2008	Suspend	4-1-2008
571-060-0005	7-1-2008	Amend	6-1-2008
573-035-0040	3-14-2008	Amend	4-1-2008
573-040-0005	4-15-2008	Amend	5-1-2008
573-050-0045	6-5-2008	Amend	7-1-2008
573-075-0100	3-14-2008	Amend	4-1-2008
573-095-0010	3-14-2008	Amend	4-1-2008
574-050-0005	2-1-2008	Amend	3-1-2008
575-095-0005	1-9-2008	Adopt	2-1-2008
575-095-0010	1-9-2008	Adopt	2-1-2008
575-095-0015	1-9-2008	Adopt	2-1-2008
575-095-0020	1-9-2008	Adopt	2-1-2008
575-095-0025	1-9-2008	Adopt	2-1-2008
575-095-0030	1-9-2008	Adopt	2-1-2008
575-095-0035	1-9-2008	Adopt	2-1-2008
575-095-0040	1-9-2008	Adopt	2-1-2008
575-095-0045	1-9-2008	Adopt	2-1-2008
576-008-0200	2-19-2008	Suspend	4-1-2008
576-008-0205	2-19-2008	Suspend	4-1-2008
576-008-0210	2-19-2008	Suspend	4-1-2008
576-008-0215	2-19-2008	Suspend	4-1-2008
576-008-0220	2-19-2008	Suspend	4-1-2008
576-008-0223	2-19-2008	Suspend	4-1-2008
576-008-0225	2-19-2008	Suspend	4-1-2008
576-008-0228	2-19-2008	Suspend	4-1-2008
576-008-0230	2-19-2008	Suspend	4-1-2008
576-008-0235	2-19-2008	Suspend	4-1-2008
576-008-0240	2-19-2008	Suspend	4-1-2008
576-008-0245	2-19-2008	Suspend	4-1-2008
576-008-0255	2-19-2008	Suspend	4-1-2008
576-008-0260	2-19-2008	Suspend	4-1-2008
576-008-0275	2-19-2008	Suspend	4-1-2008
576-008-0277	2-19-2008	Suspend	4-1-2008
576-008-0280	2-19-2008	Suspend	4-1-2008
576-008-0282	2-19-2008	Suspend	4-1-2008
576-008-0285	2-19-2008	Suspend	4-1-2008
576-008-0287	2-19-2008	Suspend	4-1-2008
576-008-0290	2-19-2008	Suspend	4-1-2008
576-008-0292	2-19-2008	Suspend	4-1-2008
576-008-0295	2-19-2008	Suspend	4-1-2008
577-001-0001	4-21-2008	Suspend	5-1-2008
577-001-0005	4-21-2008	Amend(T)	5-1-2008
577-001-0010	4-21-2008	Amend(T)	5-1-2008
577-001-0014	4-21-2008	Suspend	5-1-2008
577-001-0015	4-21-2008	Suspend	5-1-2008
577-001-0020	4-21-2008	Amend(T)	5-1-2008
577-001-0025	4-21-2008	Amend(T)	5-1-2008
577-001-0030	4-21-2008	Suspend	5-1-2008
577-001-0035	4-21-2008	Amend(T)	5-1-2008
577-001-0040	4-21-2008	Amend(T)	5-1-2008
577-001-0041	4-21-2008	Amend(T)	5-1-2008
577-001-0045	4-21-2008	Amend(T)	5-1-2008
577-001-0050	4-21-2008	Amend(T)	5-1-2008
577-030-0005	5-1-2008	Amend(T)	5-1-2008
577-030-0010	5-1-2008	Amend(T)	5-1-2008
577-030-0015	5-1-2008	Amend(T)	5-1-2008
577-030-0016	5-1-2008	Adopt(T)	5-1-2008
577-030-0020	5-1-2008	Amend(T)	5-1-2008
577-030-0021	5-1-2008	Adopt(T)	5-1-2008
577-030-0025	5-1-2008	Amend(T)	5-1-2008
577-030-0030	5-1-2008	Amend(T)	5-1-2008
577-030-0035	1-1-2008	Amend(T)	2-1-2008
577-030-0040	5-1-2008	Amend(T)	5-1-2008
577-030-0045	5-1-2008	Amend(T)	5-1-2008
577-030-0050	5-1-2008	Amend(T)	5-1-2008
577-030-0060	5-1-2008	Amend(T)	5-1-2008
577-030-0065	5-1-2008	Amend(T)	5-1-2008
577-030-0070	5-1-2008	Amend(T)	5-1-2008
577-030-0075	5-1-2008	Suspend	5-1-2008
577-030-0080	5-1-2008	Am. & Ren.(T)	5-1-2008
577-060-0020	7-1-2008	Amend(T)	7-1-2008
577-577-030-0035	5-16-2008	Amend	6-1-2008
578-041-0030	6-10-2008	Amend	7-1-2008
578-072-0010	6-10-2008	Amend	7-1-2008
578-072-0030	6-10-2008	Amend	7-1-2008
578-072-0050	6-10-2008	Amend	7-1-2008
578-072-0070	6-10-2008	Amend	7-1-2008
579-020-0006	3-14-2008	Amend	4-1-2008
579-020-0008	4-15-2008	Suspend	5-1-2008
579-020-0012	4-15-2008	Suspend	5-1-2008
579-020-0017	4-15-2008	Suspend	5-1-2008
579-030-0005	3-14-2008	Amend	4-1-2008
579-030-0010	3-14-2008	Amend	4-1-2008
579-030-0015	3-14-2008	Amend	4-1-2008
579-030-0020	3-14-2008	Amend	4-1-2008
580-023-0005	2-19-2008	Suspend	4-1-2008
580-023-0010	2-19-2008	Suspend	4-1-2008
580-023-0015	2-19-2008	Suspend	4-1-2008
580-023-0020	2-19-2008	Suspend	4-1-2008
580-023-0025	2-19-2008	Suspend	4-1-2008
580-023-0030	2-19-2008	Suspend	4-1-2008
580-023-0035	2-19-2008	Suspend	4-1-2008

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580-023-0045	2-19-2008	Suspend	4-1-2008
580-023-0050	2-19-2008	Suspend	4-1-2008
580-023-0055	2-19-2008	Suspend	4-1-2008
580-023-0060	2-19-2008	Suspend	4-1-2008
580-023-0065	2-19-2008	Suspend	4-1-2008
580-023-0105	2-19-2008	Adopt(T)	4-1-2008
580-023-0110	2-19-2008	Adopt(T)	4-1-2008
580-023-0115	2-19-2008	Adopt(T)	4-1-2008
580-023-0120	2-19-2008	Adopt(T)	4-1-2008
580-023-0125	2-19-2008	Adopt(T)	4-1-2008
580-023-0130	2-19-2008	Adopt(T)	4-1-2008
580-023-0135	2-19-2008	Adopt(T)	4-1-2008
580-023-0140	2-19-2008	Adopt(T)	4-1-2008
580-023-0145	2-19-2008	Adopt(T)	4-1-2008
580-023-0150	2-19-2008	Adopt(T)	4-1-2008
580-040-0035	1-14-2008	Amend	2-1-2008
580-040-0040	3-20-2008	Amend(T)	5-1-2008
580-040-0100	2-19-2008	Suspend	4-1-2008
580-040-0200	2-19-2008	Suspend	4-1-2008
580-040-0205	2-19-2008	Suspend	4-1-2008
580-040-0210	2-19-2008	Suspend	4-1-2008
580-040-0215	2-19-2008	Suspend	4-1-2008
580-040-0220	2-19-2008	Suspend	4-1-2008
580-040-0223	2-19-2008	Suspend	4-1-2008
580-040-0225	2-19-2008	Suspend	4-1-2008
580-040-0230	2-19-2008	Suspend	4-1-2008
580-040-0235	2-19-2008	Suspend	4-1-2008
580-040-0240	2-19-2008	Suspend	4-1-2008
580-040-0245	2-19-2008	Suspend	4-1-2008
580-040-0255	2-19-2008	Suspend	4-1-2008
580-040-0260	2-19-2008	Suspend	4-1-2008
580-040-0275	2-19-2008	Suspend	4-1-2008
580-040-0277	2-19-2008	Suspend	4-1-2008
580-040-0280	2-19-2008	Suspend	4-1-2008
580-040-0285	2-19-2008	Suspend	4-1-2008
580-040-0290	2-19-2008	Suspend	4-1-2008
580-040-0292	2-19-2008	Suspend	4-1-2008
580-040-0295	2-19-2008	Suspend	4-1-2008
580-042-0010	2-19-2008	Amend(T)	4-1-2008
580-043-0060	1-14-2008	Amend	2-1-2008
580-043-0065	1-14-2008	Amend	2-1-2008
580-043-0070	1-14-2008	Amend	2-1-2008
580-043-0075	1-14-2008	Amend	2-1-2008
580-043-0085	1-14-2008	Amend	2-1-2008
580-043-0090	1-14-2008	Amend	2-1-2008
580-043-0095	1-14-2008	Amend	2-1-2008
580-043-0100	1-14-2008	Adopt	2-1-2008
580-050-0001	2-19-2008	Suspend	4-1-2008
580-050-0005	2-19-2008	Suspend	4-1-2008
580-050-0010	2-19-2008	Suspend	4-1-2008
580-050-0015	2-19-2008	Suspend	4-1-2008
580-050-0020	2-19-2008	Suspend	4-1-2008
580-050-0025	2-19-2008	Suspend	4-1-2008
580-050-0032	2-19-2008	Suspend	4-1-2008
580-050-0033	2-19-2008	Suspend	4-1-2008
580-050-0040	2-19-2008	Suspend	4-1-2008
580-050-0041	2-19-2008	Suspend	4-1-2008
580-050-0042	2-19-2008	Suspend	4-1-2008
580-050-0100	2-19-2008	Suspend	4-1-2008
580-050-0105	2-19-2008	Suspend	4-1-2008
580-060-0000	2-19-2008	Adopt(T)	4-1-2008
580-060-0005	2-19-2008	Adopt(T)	4-1-2008
580-060-0010	2-19-2008	Adopt(T)	4-1-2008
580-060-0015	2-19-2008	Adopt(T)	4-1-2008
580-060-0020	2-19-2008	Adopt(T)	4-1-2008
580-060-0025	2-19-2008	Adopt(T)	4-1-2008
580-060-0030	2-19-2008	Adopt(T)	4-1-2008
580-060-0035	2-19-2008	Adopt(T)	4-1-2008
580-060-0040	2-19-2008	Adopt(T)	4-1-2008
580-060-0045	2-19-2008	Adopt(T)	4-1-2008
580-060-0050	2-19-2008	Adopt(T)	4-1-2008
580-060-0055	2-19-2008	Adopt(T)	4-1-2008
580-060-0060	2-19-2008	Adopt(T)	4-1-2008
580-061-0000	2-19-2008	Adopt(T)	4-1-2008
580-061-0005	2-19-2008	Adopt(T)	4-1-2008
580-061-0010	2-19-2008	Adopt(T)	4-1-2008
580-061-0015	2-19-2008	Adopt(T)	4-1-2008
580-061-0020	2-19-2008	Adopt(T)	4-1-2008
580-061-0025	2-19-2008	Adopt(T)	4-1-2008
580-061-0030	2-19-2008	Adopt(T)	4-1-2008
580-061-0035	2-19-2008	Adopt(T)	4-1-2008
580-061-0040	2-19-2008	Adopt(T)	4-1-2008
580-061-0045	2-19-2008	Adopt(T)	4-1-2008
580-061-0050	2-19-2008	Adopt(T)	4-1-2008
580-061-0055	2-19-2008	Adopt(T)	4-1-2008
580-061-0060	2-19-2008	Adopt(T)	4-1-2008
580-061-0065	2-19-2008	Adopt(T)	4-1-2008
580-061-0070	2-19-2008	Adopt(T)	4-1-2008
580-061-0075	2-19-2008	Adopt(T)	4-1-2008
580-061-0080	2-19-2008	Adopt(T)	4-1-2008
580-061-0085	2-19-2008	Adopt(T)	4-1-2008
580-061-0090	2-19-2008	Adopt(T)	4-1-2008
580-061-0095	2-19-2008	Adopt(T)	4-1-2008
580-061-0100	2-19-2008	Adopt(T)	4-1-2008
580-061-0105	2-19-2008	Adopt(T)	4-1-2008
580-061-0110	2-19-2008	Adopt(T)	4-1-2008
580-061-0115	2-19-2008	Adopt(T)	4-1-2008
580-061-0120	2-19-2008	Adopt(T)	4-1-2008
580-061-0125	2-19-2008	Adopt(T)	4-1-2008
580-061-0130	2-19-2008	Adopt(T)	4-1-2008
580-061-0135	2-19-2008	Adopt(T)	4-1-2008
580-061-0140	2-19-2008	Adopt(T)	4-1-2008
580-061-0145	2-19-2008	Adopt(T)	4-1-2008
580-061-0145	6-5-2008	Amend(T)	7-1-2008
580-061-0145(T)	6-5-2008	Suspend	7-1-2008
580-061-0150	2-19-2008	Adopt(T)	4-1-2008
580-061-0155	2-19-2008	Adopt(T)	4-1-2008
580-061-0160	2-19-2008	Adopt(T)	4-1-2008
580-062-0000	2-19-2008	Adopt(T)	4-1-2008
580-062-0005	2-19-2008	Adopt(T)	4-1-2008
580-062-0010	2-19-2008	Adopt(T)	4-1-2008

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580-062-0015	2-19-2008	Adopt(T)	4-1-2008
580-062-0020	2-19-2008	Adopt(T)	4-1-2008
580-063-0000	2-19-2008	Adopt(T)	4-1-2008
580-063-0005	2-19-2008	Adopt(T)	4-1-2008
580-063-0010	2-19-2008	Adopt(T)	4-1-2008
580-063-0010	6-5-2008	Amend(T)	7-1-2008
580-063-0010(T)	6-5-2008	Suspend	7-1-2008
580-063-0015	2-19-2008	Adopt(T)	4-1-2008
580-063-0020	2-19-2008	Adopt(T)	4-1-2008
580-063-0020	6-5-2008	Amend(T)	7-1-2008
580-063-0020(T)	6-5-2008	Suspend	7-1-2008
580-063-0025	2-19-2008	Adopt(T)	4-1-2008
580-063-0030	2-19-2008	Adopt(T)	4-1-2008
580-063-0035	2-19-2008	Adopt(T)	4-1-2008
580-063-0040	2-19-2008	Adopt(T)	4-1-2008
580-063-0045	2-19-2008	Adopt(T)	4-1-2008
581-011-0140	1-25-2008	Amend	3-1-2008
581-015-0055	2-22-2008	Repeal	4-1-2008
581-015-0065	2-22-2008	Repeal	4-1-2008
581-015-2035	4-21-2008	Adopt	6-1-2008
581-015-2570	12-12-2007	Amend	1-1-2008
581-015-2595	12-12-2007	Amend	1-1-2008
581-019-0033	2-22-2008	Adopt(T)	4-1-2008
581-020-0060	1-25-2008	Amend	3-1-2008
581-020-0065	1-25-2008	Amend	3-1-2008
581-020-0070	1-25-2008	Amend	3-1-2008
581-020-0075	1-25-2008	Amend	3-1-2008
581-020-0080	1-25-2008	Amend	3-1-2008
581-020-0085	1-25-2008	Amend	3-1-2008
581-020-0090	1-25-2008	Amend	3-1-2008
581-020-0250	12-12-2007	Adopt	1-1-2008
581-020-0359	3-21-2008	Adopt	5-1-2008
581-020-0361	3-21-2008	Adopt	5-1-2008
581-021-0045	5-23-2008	Amend	7-1-2008
581-021-0046	5-23-2008	Amend	7-1-2008
581-022-0413	5-23-2008	Amend	7-1-2008
581-022-1065	1-25-2008	Amend	3-1-2008
581-022-1134	5-23-2008	Adopt	7-1-2008
581-022-1135	5-23-2008	Adopt	7-1-2008
581-022-1661	12-12-2007	Adopt	1-1-2008
581-022-1940	12-12-2007	Amend	1-1-2008
581-022-1941	12-12-2007	Adopt	1-1-2008
581-023-0035	2-22-2008	Amend	4-1-2008
581-023-0040	3-21-2008	Amend	5-1-2008
581-023-0041	2-22-2008	Amend	4-1-2008
581-023-0104	12-12-2007	Amend	1-1-2008
581-023-0112	4-21-2008	Amend	6-1-2008
581-024-0205	5-23-2008	Amend	7-1-2008
581-024-0245	5-23-2008	Amend	7-1-2008
581-024-0285	12-12-2007	Amend	1-1-2008
581-045-0001	5-23-2008	Amend	7-1-2008
581-049-0020	5-23-2008	Amend	7-1-2008
581-053-5556	4-18-2008	Amend	6-1-2008
582-001-0010	2-4-2008	Amend	3-1-2008
582-001-0010	3-3-2008	Amend	4-1-2008
582-001-0010	4-10-2008	Amend	5-1-2008
582-030-0005	2-4-2008	Amend	3-1-2008
582-030-0008	2-4-2008	Amend	3-1-2008
582-070-0020	2-4-2008	Amend	3-1-2008
582-070-0020	3-3-2008	Amend	4-1-2008
582-070-0020	4-10-2008	Amend	5-1-2008
582-070-0025	2-4-2008	Amend	3-1-2008
582-070-0030	2-4-2008	Amend	3-1-2008
582-080-0020	3-3-2008	Amend	4-1-2008
583-050-0011	2-7-2008	Amend	3-1-2008
583-070-0002	4-14-2008	Adopt	5-1-2008
583-070-0011	4-14-2008	Adopt	5-1-2008
583-070-0015	4-14-2008	Adopt	5-1-2008
583-070-0020	4-14-2008	Adopt	5-1-2008
584-005-0005	4-15-2008	Amend	5-1-2008
584-005-0005	5-30-2008	Amend(T)	7-1-2008
584-010-0006	4-15-2008	Adopt	5-1-2008
584-010-0010	4-15-2008	Amend	5-1-2008
584-010-0015	4-15-2008	Amend	5-1-2008
584-010-0020	4-15-2008	Amend	5-1-2008
584-010-0025	4-15-2008	Amend	5-1-2008
584-010-0030	4-15-2008	Amend	5-1-2008
584-010-0035	4-15-2008	Amend	5-1-2008
584-010-0040	4-15-2008	Repeal	5-1-2008
584-010-0045	4-15-2008	Amend	5-1-2008
584-010-0050	4-15-2008	Amend	5-1-2008
584-010-0055	4-15-2008	Amend	5-1-2008
584-010-0060	4-15-2008	Amend	5-1-2008
584-010-0065	4-15-2008	Repeal	5-1-2008
584-010-0070	4-15-2008	Repeal	5-1-2008
584-010-0080	4-15-2008	Amend	5-1-2008
584-010-0090	4-15-2008	Amend	5-1-2008
584-010-0100	4-15-2008	Amend	5-1-2008
584-010-0120	4-15-2008	Repeal	5-1-2008
584-010-0140	4-15-2008	Amend	5-1-2008
584-017-0001	4-15-2008	Am. & Ren.	5-1-2008
584-017-0115	6-13-2008	Amend	7-1-2008
584-017-0175	4-15-2008	Amend	5-1-2008
584-017-0185	2-15-2008	Amend(T)	3-1-2008
584-017-0185	6-13-2008	Amend	7-1-2008
584-017-0350	4-15-2008	Repeal	5-1-2008
584-017-0351	12-14-2007	Adopt	1-1-2008
584-017-0355	4-15-2008	Amend	5-1-2008
584-017-0442	4-15-2008	Repeal	5-1-2008
584-017-0452	4-15-2008	Repeal	5-1-2008
584-019-0002	12-14-2007	Amend	1-1-2008
584-019-0003	12-14-2007	Amend	1-1-2008
584-019-0020	12-14-2007	Repeal	1-1-2008
584-019-0025	12-14-2007	Amend	1-1-2008
584-019-0035	12-14-2007	Amend	1-1-2008
584-019-0040	12-14-2007	Amend	1-1-2008
584-020-0000	12-14-2007	Amend	1-1-2008
584-020-0005	12-14-2007	Amend	1-1-2008
584-020-0010	12-14-2007	Amend	1-1-2008
584-020-0015	12-14-2007	Amend	1-1-2008
584-020-0020	12-14-2007	Amend	1-1-2008
584-020-0025	12-14-2007	Amend	1-1-2008

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584-020-0030	12-14-2007	Amend	1-1-2008
584-020-0035	12-14-2007	Amend	1-1-2008
584-020-0040	12-14-2007	Amend	1-1-2008
584-020-0041	12-14-2007	Amend	1-1-2008
584-021-0105	6-13-2008	Amend	7-1-2008
584-021-0175	6-13-2008	Repeal	7-1-2008
584-023-0005	12-14-2007	Amend	1-1-2008
584-023-0015	12-14-2007	Amend	1-1-2008
584-023-0025	12-14-2007	Amend	1-1-2008
584-036-0055	6-13-2008	Amend	7-1-2008
584-036-0060	6-13-2008	Repeal	7-1-2008
584-036-0067	4-15-2008	Amend	5-1-2008
584-038-0004	4-15-2008	Amend	5-1-2008
584-038-0080	12-14-2007	Amend	1-1-2008
584-038-0335	12-14-2007	Amend	1-1-2008
584-038-0336	12-14-2007	Amend	1-1-2008
584-040-0080	12-14-2007	Amend	1-1-2008
584-040-0310	12-14-2007	Amend	1-1-2008
584-040-0315	12-14-2007	Amend	1-1-2008
584-044-0011	4-15-2008	Amend	5-1-2008
584-044-0015	4-15-2008	Amend	5-1-2008
584-044-0023	4-15-2008	Amend	5-1-2008
584-046-0003	6-13-2008	Amend	7-1-2008
584-046-0016	6-13-2008	Amend	7-1-2008
584-046-0019	6-13-2008	Amend	7-1-2008
584-046-0020	4-15-2008	Amend	5-1-2008
584-046-0020	6-13-2008	Amend	7-1-2008
584-046-0021	6-13-2008	Amend	7-1-2008
584-046-0024	4-15-2008	Amend	5-1-2008
584-048-0045	6-13-2008	Repeal	7-1-2008
584-048-0105	4-15-2008	Amend	5-1-2008
584-050-0002	12-14-2007	Amend	1-1-2008
584-050-0005	12-14-2007	Amend	1-1-2008
584-050-0006	12-14-2007	Amend	1-1-2008
584-050-0009	12-14-2007	Amend	1-1-2008
584-050-0012	12-14-2007	Amend	1-1-2008
584-050-0015	12-14-2007	Amend	1-1-2008
584-050-0016	12-14-2007	Amend	1-1-2008
584-050-0018	12-14-2007	Amend	1-1-2008
584-050-0019	12-14-2007	Amend	1-1-2008
584-050-0020	12-14-2007	Amend	1-1-2008
584-050-0035	12-14-2007	Amend	1-1-2008
584-050-0040	12-14-2007	Amend	1-1-2008
584-050-0042	12-14-2007	Amend	1-1-2008
584-050-0065	12-14-2007	Amend	1-1-2008
584-050-0066	12-14-2007	Amend	1-1-2008
584-050-0067	12-14-2007	Amend	1-1-2008
584-050-0070	12-14-2007	Amend	1-1-2008
584-052-0015	4-15-2008	Amend	5-1-2008
584-052-0032	12-14-2007	Amend	1-1-2008
584-060-0002	4-15-2008	Amend	5-1-2008
584-060-0012	12-14-2007	Amend	1-1-2008
584-060-0012	4-15-2008	Amend	5-1-2008
584-060-0014	4-15-2008	Amend	5-1-2008
584-060-0051	2-15-2008	Amend(T)	3-1-2008
584-060-0052	4-15-2008	Amend	5-1-2008
584-060-0210	4-15-2008	Amend	5-1-2008
584-065-0070	4-15-2008	Amend	5-1-2008
584-065-0080	4-15-2008	Amend	5-1-2008
584-065-0120	6-13-2008	Adopt	7-1-2008
584-070-0011	12-14-2007	Repeal	1-1-2008
584-070-0012	6-13-2008	Amend	7-1-2008
584-070-0014	12-14-2007	Amend	1-1-2008
584-070-0021	12-14-2007	Repeal	1-1-2008
584-070-0132	4-15-2008	Amend	5-1-2008
584-070-0320	4-15-2008	Repeal	5-1-2008
584-100-0006	6-5-2008	Amend(T)	7-1-2008
603-011-0610	11-28-2007	Amend	1-1-2008
603-011-0610	9-1-2008	Amend	7-1-2008
603-011-0615	9-1-2008	Adopt	7-1-2008
603-011-0620	11-28-2007	Amend	1-1-2008
603-011-0620	9-1-2008	Amend	7-1-2008
603-014-0016	2-6-2008	Amend	3-1-2008
603-014-0055	2-6-2008	Amend	3-1-2008
603-014-0065	2-6-2008	Amend	3-1-2008
603-014-0095	2-6-2008	Amend	3-1-2008
603-014-0100	2-6-2008	Repeal	3-1-2008
603-014-0135	2-6-2008	Amend	3-1-2008
603-027-0410	2-15-2008	Amend	3-1-2008
603-027-0410	3-17-2008	Amend(T)	4-1-2008
603-027-0420	11-29-2007	Amend(T)	1-1-2008
603-027-0420	2-15-2008	Amend	3-1-2008
603-027-0420	3-17-2008	Amend(T)	4-1-2008
603-027-0420(T)	11-29-2007	Suspend	1-1-2008
603-027-0430	11-29-2007	Amend(T)	1-1-2008
603-027-0430	2-15-2008	Amend	3-1-2008
603-027-0430	3-17-2008	Amend(T)	4-1-2008
603-027-0430(T)	11-29-2007	Suspend	1-1-2008
603-027-0440	2-15-2008	Amend	3-1-2008
603-027-0440	3-17-2008	Amend(T)	4-1-2008
603-027-0470	2-15-2008	Amend	3-1-2008
603-027-0490	2-15-2008	Amend	3-1-2008
603-027-0490	3-17-2008	Amend(T)	4-1-2008
603-052-0127	2-8-2008	Amend	3-1-2008
603-052-0129	2-8-2008	Amend	3-1-2008
603-052-0130	2-8-2008	Repeal	3-1-2008
603-052-0132	2-8-2008	Repeal	3-1-2008
603-052-0134	2-8-2008	Repeal	3-1-2008
603-052-0136	2-8-2008	Repeal	3-1-2008
603-052-0138	2-8-2008	Repeal	3-1-2008
603-052-0140	2-8-2008	Repeal	3-1-2008
603-052-0142	2-8-2008	Repeal	3-1-2008
603-052-0145	2-8-2008	Repeal	3-1-2008
603-052-0347	1-11-2008	Amend	2-1-2008
603-052-0360	2-8-2008	Amend	3-1-2008
603-052-0395	2-28-2008	Adopt	4-1-2008
603-052-0880	1-7-2008	Amend	2-1-2008
603-052-1200	3-7-2008	Amend	4-1-2008
603-052-1221	2-8-2008	Amend	3-1-2008
603-052-1230	1-16-2008	Amend	3-1-2008
603-052-1240	1-7-2008	Amend	2-1-2008
603-052-1250	1-16-2008	Amend	3-1-2008

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603-054-0016	4-15-2008	Amend	5-1-2008
603-054-0017	1-7-2008	Amend	2-1-2008
603-054-0017	4-15-2008	Amend	5-1-2008
603-054-0018	1-7-2008	Amend	2-1-2008
603-054-0018	4-15-2008	Amend	5-1-2008
603-054-0024	1-7-2008	Amend	2-1-2008
603-054-0035	2-15-2008	Amend	3-1-2008
603-058-0032	1-1-2009	Adopt	6-1-2008
617-010-0045	7-1-2008	Amend	7-1-2008
620-020-0010	1-25-2008	Adopt	3-1-2008
620-020-0020	1-25-2008	Adopt	3-1-2008
620-020-0030	1-25-2008	Adopt	3-1-2008
623-040-0005	12-3-2007	Adopt	1-1-2008
623-040-0010	12-3-2007	Adopt	1-1-2008
623-040-0015	12-3-2007	Adopt	1-1-2008
629-001-0005	3-7-2008	Amend	4-1-2008
629-041-0555	5-12-2008	Amend	6-1-2008
629-041-0557	5-12-2008	Amend	6-1-2008
629-043-0040	1-1-2008	Amend	2-1-2008
629-043-0041	1-1-2008	Repeal	2-1-2008
629-043-0043	1-1-2008	Repeal	2-1-2008
629-048-0001	1-1-2008	Adopt	2-1-2008
629-048-0005	1-1-2008	Adopt	2-1-2008
629-048-0010	1-1-2008	Adopt	2-1-2008
629-048-0020	1-1-2008	Adopt	2-1-2008
629-048-0100	1-1-2008	Adopt	2-1-2008
629-048-0110	1-1-2008	Adopt	2-1-2008
629-048-0120	1-1-2008	Adopt	2-1-2008
629-048-0130	1-1-2008	Adopt	2-1-2008
629-048-0140	1-1-2008	Adopt	2-1-2008
629-048-0150	1-1-2008	Adopt	2-1-2008
629-048-0160	1-1-2008	Adopt	2-1-2008
629-048-0200	1-1-2008	Adopt	2-1-2008
629-048-0210	1-1-2008	Adopt	2-1-2008
629-048-0220	1-1-2008	Adopt	2-1-2008
629-048-0230	1-1-2008	Adopt	2-1-2008
629-048-0300	1-1-2008	Adopt	2-1-2008
629-048-0310	1-1-2008	Adopt	2-1-2008
629-048-0320	1-1-2008	Adopt	2-1-2008
629-048-0330	1-1-2008	Adopt	2-1-2008
629-048-0400	1-1-2008	Adopt	2-1-2008
629-048-0450	1-1-2008	Adopt	2-1-2008
629-048-0500	1-1-2008	Adopt	2-1-2008
635-001-0210	1-1-2008	Amend	2-1-2008
635-003-0003	5-1-2008	Amend	6-1-2008
635-003-0004	3-15-2008	Amend(T)	4-1-2008
635-004-0018	1-1-2008	Amend	1-1-2008
635-004-0019	11-28-2007	Amend(T)	1-1-2008
635-004-0019	12-11-2007	Amend(T)	1-1-2008
635-004-0019	5-1-2008	Amend(T)	6-1-2008
635-004-0019(T)	11-28-2007	Suspend	1-1-2008
635-004-0027	1-1-2008	Amend(T)	2-1-2008
635-004-0033	11-28-2007	Amend(T)	1-1-2008
635-004-0033	1-1-2008	Amend	1-1-2008
635-004-0033(T)	11-28-2007	Suspend	1-1-2008
635-004-0170	11-28-2007	Amend(T)	1-1-2008
635-004-0170	1-1-2008	Amend	1-1-2008
635-005-0005	1-23-2008	Amend	3-1-2008
635-005-0055	12-11-2007	Amend(T)	1-1-2008
635-005-0055	12-14-2007	Amend(T)	1-1-2008
635-005-0055	12-14-2007	Suspend	1-1-2008
635-005-0055	3-25-2008	Amend(T)	5-1-2008
635-005-0055	6-11-2008	Amend(T)	7-1-2008
635-005-0055(T)	3-25-2008	Suspend	5-1-2008
635-005-0055(T)	6-11-2008	Suspend	7-1-2008
635-005-0064	1-23-2008	Amend	3-1-2008
635-005-0065	1-23-2008	Amend	3-1-2008
635-005-0066	1-23-2008	Amend	3-1-2008
635-006-0225	4-1-2008	Amend(T)	5-1-2008
635-006-0230	4-1-2008	Amend(T)	5-1-2008
635-006-0232	1-15-2008	Amend	2-1-2008
635-006-0850	1-1-2008	Amend(T)	2-1-2008
635-006-0850	1-23-2008	Amend	3-1-2008
635-006-0850(T)	1-23-2008	Repeal	3-1-2008
635-006-0910	1-23-2008	Amend	3-1-2008
635-006-0930	1-23-2008	Amend	3-1-2008
635-006-1015	1-15-2008	Amend	2-1-2008
635-006-1065	1-15-2008	Amend	2-1-2008
635-006-1075	1-15-2008	Amend	2-1-2008
635-008-0115	4-24-2008	Amend	6-1-2008
635-008-0120	4-24-2008	Amend	6-1-2008
635-011-0100	1-1-2008	Amend	2-1-2008
635-013-0003	1-1-2008	Amend	2-1-2008
635-013-0003	5-1-2008	Amend	6-1-2008
635-013-0004	1-1-2008	Amend	2-1-2008
635-013-0004	3-15-2008	Amend(T)	4-1-2008
635-013-0009	3-15-2008	Amend(T)	4-1-2008
635-014-0080	1-1-2008	Amend	2-1-2008
635-014-0090	1-1-2008	Amend	2-1-2008
635-014-0090	3-15-2008	Amend(T)	4-1-2008
635-016-0080	1-1-2008	Amend	2-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008
635-016-0090	6-1-2008	Amend(T)	7-1-2008
635-017-0080	1-1-2008	Amend	2-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008
635-017-0090	1-9-2008	Amend(T)	2-1-2008
635-017-0090	2-1-2008	Amend(T)	3-1-2008
635-017-0090	3-1-2008	Amend(T)	4-1-2008
635-017-0090	5-12-2008	Amend(T)	6-1-2008
635-017-0090	6-2-2008	Amend(T)	7-1-2008
635-017-0090(T)	2-1-2008	Suspend	3-1-2008
635-017-0090(T)	5-12-2008	Suspend	6-1-2008
635-017-0090(T)	6-2-2008	Suspend	7-1-2008
635-017-0095	1-1-2008	Amend	2-1-2008
635-017-0095	1-1-2008	Amend(T)	2-1-2008
635-017-0095	2-11-2008	Amend	3-1-2008
635-017-0095(T)	1-1-2008	Suspend	2-1-2008
635-017-0095(T)	2-11-2008	Repeal	3-1-2008
635-018-0080	1-1-2008	Amend	2-1-2008

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635-018-0090	1-1-2008	Amend	2-1-2008
635-018-0090	4-15-2008	Amend(T)	5-1-2008
635-018-0090	5-1-2008	Amend(T)	5-1-2008
635-019-0080	1-1-2008	Amend	2-1-2008
635-019-0090	1-1-2008	Amend	2-1-2008
635-019-0090	5-31-2008	Amend(T)	7-1-2008
635-021-0080	1-1-2008	Amend	2-1-2008
635-021-0090	1-1-2008	Amend	2-1-2008
635-021-0090	5-31-2008	Amend(T)	7-1-2008
635-023-0080	1-1-2008	Amend	2-1-2008
635-023-0090	1-1-2008	Amend	2-1-2008
635-023-0095	1-1-2008	Amend	2-1-2008
635-023-0095	1-1-2008	Amend(T)	2-1-2008
635-023-0095	2-11-2008	Amend	3-1-2008
635-023-0095	3-15-2008	Amend(T)	4-1-2008
635-023-0095	3-26-2008	Amend(T)	5-1-2008
635-023-0095(T)	1-1-2008	Suspend	2-1-2008
635-023-0095(T)	2-11-2008	Repeal	3-1-2008
635-023-0125	1-1-2008	Amend	2-1-2008
635-023-0125	2-25-2008	Amend(T)	4-1-2008
635-023-0125	2-27-2008	Amend(T)	4-1-2008
635-023-0125	4-21-2008	Amend(T)	6-1-2008
635-023-0125	5-13-2008	Amend(T)	6-1-2008
635-023-0125(T)	4-21-2008	Suspend	6-1-2008
635-023-0125(T)	5-13-2008	Suspend	6-1-2008
635-023-0128	1-1-2008	Amend	2-1-2008
635-023-0128	5-1-2008	Amend	6-1-2008
635-023-0128	6-16-2008	Amend(T)	7-1-2008
635-023-0130	1-1-2008	Amend	2-1-2008
635-023-0130	5-1-2008	Amend	6-1-2008
635-023-0134	4-26-2008	Amend(T)	6-1-2008
635-039-0080	1-1-2008	Amend	2-1-2008
635-039-0085	6-1-2008	Amend(T)	7-1-2008
635-039-0090	1-1-2008	Amend	2-1-2008
635-041-0050	2-11-2008	Amend	3-1-2008
635-041-0065	1-31-2008	Amend(T)	3-1-2008
635-041-0065	2-29-2008	Amend(T)	4-1-2008
635-041-0065	3-5-2008	Amend(T)	4-1-2008
635-041-0065	3-10-2008	Amend(T)	4-1-2008
635-041-0065(T)	3-10-2008	Suspend	4-1-2008
635-041-0076	5-5-2008	Amend(T)	6-1-2008
635-041-0076	5-11-2008	Amend(T)	6-1-2008
635-041-0076	6-16-2008	Amend(T)	7-1-2008
635-041-0076(T)	5-11-2008	Suspend	6-1-2008
635-041-0076(T)	6-16-2008	Suspend	7-1-2008
635-042-0010	2-11-2008	Amend	3-1-2008
635-042-0022	4-1-2008	Amend(T)	5-1-2008
635-042-0022	4-8-2008	Amend(T)	5-1-2008
635-042-0022	4-15-2008	Amend(T)	5-1-2008
635-042-0022(T)	4-15-2008	Suspend	5-1-2008
635-042-0027	6-24-2008	Amend(T)	7-1-2008
635-042-0110	5-12-2008	Amend(T)	4-1-2008
635-042-0130	12-1-2007	Amend(T)	1-1-2008
635-042-0130	1-1-2008	Amend(T)	2-1-2008
635-042-0130	2-11-2008	Amend	3-1-2008
635-042-0130(T)	1-1-2008	Suspend	2-1-2008
635-042-0130(T)	2-11-2008	Repeal	3-1-2008
635-042-0135	1-1-2008	Amend(T)	2-1-2008
635-042-0135	1-31-2008	Amend(T)	3-1-2008
635-042-0135	2-11-2008	Amend	3-1-2008
635-042-0135	2-21-2008	Amend(T)	4-1-2008
635-042-0135(T)	1-31-2008	Suspend	3-1-2008
635-042-0135(T)	2-11-2008	Repeal	3-1-2008
635-042-0145	1-31-2008	Amend(T)	3-1-2008
635-042-0145	3-2-2008	Amend(T)	4-1-2008
635-042-0145	3-30-2008	Amend(T)	5-1-2008
635-042-0145	5-12-2008	Amend(T)	6-1-2008
635-042-0145	6-4-2008	Amend(T)	7-1-2008
635-042-0145(T)	3-2-2008	Suspend	4-1-2008
635-042-0145(T)	3-30-2008	Suspend	5-1-2008
635-042-0145(T)	5-12-2008	Suspend	6-1-2008
635-042-0145(T)	6-4-2008	Suspend	7-1-2008
635-042-0160	1-31-2008	Amend(T)	3-1-2008
635-042-0160	3-2-2008	Amend(T)	4-1-2008
635-042-0160	5-12-2008	Amend(T)	6-1-2008
635-042-0160	6-4-2008	Amend(T)	7-1-2008
635-042-0160(T)	3-2-2008	Suspend	4-1-2008
635-042-0160(T)	5-12-2008	Suspend	6-1-2008
635-042-0160(T)	6-4-2008	Suspend	7-1-2008
635-042-0170	4-28-2008	Amend(T)	6-1-2008
635-042-0170	5-12-2008	Amend(T)	6-1-2008
635-042-0170	6-4-2008	Amend(T)	7-1-2008
635-042-0170(T)	5-12-2008	Suspend	6-1-2008
635-042-0170(T)	6-4-2008	Suspend	7-1-2008
635-042-0180	1-31-2008	Amend(T)	3-1-2008
635-042-0180	3-2-2008	Amend(T)	4-1-2008
635-042-0180	5-12-2008	Amend(T)	6-1-2008
635-042-0180	6-4-2008	Amend(T)	7-1-2008
635-042-0180(T)	3-2-2008	Suspend	4-1-2008
635-042-0180(T)	5-12-2008	Suspend	6-1-2008
635-042-0180(T)	6-4-2008	Suspend	7-1-2008
635-043-0120	4-24-2008	Adopt	6-1-2008
635-045-0002	5-28-2008	Amend	7-1-2008
635-048-0005	1-1-2008	Amend	2-1-2008
635-048-0010	1-1-2008	Amend	2-1-2008
635-048-0030	1-1-2008	Amend	2-1-2008
635-049-0000	5-28-2008	Repeal	7-1-2008
635-049-0001	5-28-2008	Adopt	7-1-2008
635-049-0005	5-28-2008	Adopt	7-1-2008
635-049-0010	5-28-2008	Repeal	7-1-2008
635-049-0015	5-28-2008	Adopt	7-1-2008
635-049-0020	5-28-2008	Repeal	7-1-2008
635-049-0025	5-28-2008	Adopt	7-1-2008
635-049-0030	5-28-2008	Repeal	7-1-2008
635-049-0035	5-28-2008	Adopt	7-1-2008
635-049-0040	5-28-2008	Repeal	7-1-2008
635-049-0045	5-28-2008	Adopt	7-1-2008
635-049-0050	5-28-2008	Repeal	7-1-2008
635-049-0055	5-28-2008	Adopt	7-1-2008
635-049-0060	5-28-2008	Repeal	7-1-2008
635-049-0070	5-28-2008	Repeal	7-1-2008
635-049-0075	5-28-2008	Adopt	7-1-2008

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635-049-0080	5-28-2008	Repeal	7-1-2008
635-049-0085	5-28-2008	Adopt	7-1-2008
635-049-0090	5-28-2008	Amend	7-1-2008
635-049-0095	5-28-2008	Adopt	7-1-2008
635-049-0100	5-28-2008	Repeal	7-1-2008
635-049-0105	5-28-2008	Adopt	7-1-2008
635-049-0110	5-28-2008	Repeal	7-1-2008
635-049-0115	5-28-2008	Adopt	7-1-2008
635-049-0120	5-28-2008	Repeal	7-1-2008
635-049-0125	5-28-2008	Adopt	7-1-2008
635-049-0130	5-28-2008	Repeal	7-1-2008
635-049-0135	5-28-2008	Adopt	7-1-2008
635-049-0140	5-28-2008	Repeal	7-1-2008
635-049-0145	5-28-2008	Adopt	7-1-2008
635-049-0160	5-28-2008	Repeal	7-1-2008
635-049-0165	5-28-2008	Adopt	7-1-2008
635-049-0170	5-28-2008	Repeal	7-1-2008
635-049-0171	5-28-2008	Repeal	7-1-2008
635-049-0175	5-28-2008	Adopt	7-1-2008
635-049-0180	5-28-2008	Repeal	7-1-2008
635-049-0185	5-28-2008	Adopt	7-1-2008
635-049-0190	5-28-2008	Repeal	7-1-2008
635-049-0195	5-28-2008	Adopt	7-1-2008
635-049-0200	5-28-2008	Amend	7-1-2008
635-049-0205	5-28-2008	Adopt	7-1-2008
635-049-0210	5-28-2008	Amend	7-1-2008
635-049-0220	5-28-2008	Repeal	7-1-2008
635-049-0225	5-28-2008	Adopt	7-1-2008
635-049-0230	5-28-2008	Repeal	7-1-2008
635-049-0240	5-28-2008	Repeal	7-1-2008
635-049-0245	5-28-2008	Adopt	7-1-2008
635-049-0250	5-28-2008	Repeal	7-1-2008
635-049-0265	5-28-2008	Adopt	7-1-2008
635-049-0275	5-28-2008	Adopt	7-1-2008
635-049-0285	5-28-2008	Adopt	7-1-2008
635-049-0330	5-28-2008	Repeal	7-1-2008
635-049-0340	5-28-2008	Repeal	7-1-2008
635-051-0048	4-21-2008	Amend(T)	6-1-2008
635-055-0000	2-21-2008	Amend	4-1-2008
635-055-0000	2-29-2008	Amend	4-1-2008
635-055-0020	2-21-2008	Amend	4-1-2008
635-055-0020	2-29-2008	Amend	4-1-2008
635-055-0030	2-21-2008	Amend	4-1-2008
635-055-0030	2-29-2008	Amend	4-1-2008
635-055-0035	2-21-2008	Amend	4-1-2008
635-055-0035	2-29-2008	Amend	4-1-2008
635-055-0075	2-21-2008	Amend	4-1-2008
635-055-0075	2-29-2008	Amend	4-1-2008
635-056-0010	11-19-2007	Amend	1-1-2008
635-056-0020	11-19-2007	Amend	1-1-2008
635-056-0070	5-28-2008	Amend(T)	7-1-2008
635-056-0075	5-28-2008	Amend(T)	7-1-2008
635-057-0000	11-19-2007	Adopt	1-1-2008
635-060-0000	6-12-2008	Amend	7-1-2008
635-060-0008	5-14-2008	Amend(T)	6-1-2008
635-060-0023	12-1-2007	Amend	1-1-2008
635-067-0000	6-12-2008	Amend	7-1-2008
635-068-0000	6-12-2008	Amend	7-1-2008
635-069-0000	6-12-2008	Amend	7-1-2008
635-070-0000	6-12-2008	Amend	7-1-2008
635-071-0000	6-12-2008	Amend	7-1-2008
635-073-0000	6-12-2008	Amend	7-1-2008
635-079-0000	2-21-2008	Adopt	4-1-2008
635-079-0005	2-21-2008	Adopt	4-1-2008
635-079-0010	2-21-2008	Adopt	4-1-2008
635-200-0090	12-31-2007	Amend(T)	2-1-2008
635-200-0090	4-24-2008	Amend	6-1-2008
635-600-0000	4-24-2008	Adopt	6-1-2008
635-600-0005	4-24-2008	Adopt	6-1-2008
635-600-0010	4-24-2008	Adopt	6-1-2008
635-600-0015	4-24-2008	Adopt	6-1-2008
635-600-0020	4-24-2008	Adopt	6-1-2008
635-600-0025	4-24-2008	Adopt	6-1-2008
635-600-0030	4-24-2008	Adopt	6-1-2008
635-600-0035	4-24-2008	Adopt	6-1-2008
635-600-0040	4-24-2008	Adopt	6-1-2008
635-600-0050	4-24-2008	Adopt	6-1-2008
635-600-0055	4-24-2008	Adopt	6-1-2008
635-600-0065	4-24-2008	Adopt	6-1-2008
641-020-0010	3-22-2008	Adopt	3-1-2008
641-020-0020	3-22-2008	Adopt	3-1-2008
641-020-0030	3-22-2008	Adopt	3-1-2008
642-020-0010	3-22-2008	Adopt	3-1-2008
642-020-0020	3-22-2008	Adopt	3-1-2008
642-020-0030	3-22-2008	Adopt	3-1-2008
644-040-0010	2-15-2008	Adopt	3-1-2008
644-040-0020	2-15-2008	Adopt	3-1-2008
644-040-0030	2-15-2008	Adopt	3-1-2008
646-040-0000	1-23-2008	Adopt	3-1-2008
646-040-0010	1-23-2008	Adopt	3-1-2008
646-040-0020	1-23-2008	Adopt	3-1-2008
647-010-0010	6-1-2008	Amend	6-1-2008
647-040-0000	4-1-2008	Adopt	4-1-2008
647-040-0010	4-1-2008	Adopt	4-1-2008
647-040-0020	4-1-2008	Adopt	4-1-2008
655-040-0000	4-1-2008	Adopt	3-1-2008
655-040-0010	4-1-2008	Adopt	3-1-2008
655-040-0020	4-1-2008	Adopt	3-1-2008
657-010-0015	7-1-2008	Amend	7-1-2008
657-020-0010	3-22-2008	Adopt	3-1-2008
657-020-0020	3-22-2008	Adopt	3-1-2008
657-020-0030	3-22-2008	Adopt	3-1-2008
660-002-0010	12-10-2007	Amend(T)	1-1-2008
660-002-0010	2-21-2008	Amend(T)	4-1-2008
660-002-0010	5-23-2008	Amend	7-1-2008
660-002-0015	12-10-2007	Amend(T)	1-1-2008
660-002-0015	2-21-2008	Amend(T)	4-1-2008
660-002-0015	5-23-2008	Amend	7-1-2008
660-004-0010	4-18-2008	Amend	6-1-2008
660-004-0040	2-13-2008	Amend	3-1-2008
660-006-0005	4-18-2008	Amend	6-1-2008
660-006-0010	4-18-2008	Amend	6-1-2008

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660-006-0055	4-18-2008	Amend	6-1-2008
660-007-0005	4-18-2008	Amend	6-1-2008
660-008-0005	4-18-2008	Amend	6-1-2008
660-011-0060	2-13-2008	Amend	3-1-2008
660-011-0060	4-18-2008	Amend	6-1-2008
660-015-0000	4-18-2008	Amend	6-1-2008
660-015-0005	4-18-2008	Amend	6-1-2008
660-015-0010	4-18-2008	Amend	6-1-2008
660-018-0005	4-18-2008	Amend	6-1-2008
660-018-0010	4-18-2008	Amend	6-1-2008
660-018-0020	4-18-2008	Amend	6-1-2008
660-018-0021	4-18-2008	Amend	6-1-2008
660-018-0022	4-18-2008	Amend	6-1-2008
660-018-0025	4-18-2008	Amend	6-1-2008
660-018-0030	4-18-2008	Amend	6-1-2008
660-018-0035	4-18-2008	Amend	6-1-2008
660-018-0040	4-18-2008	Amend	6-1-2008
660-018-0045	4-18-2008	Amend	6-1-2008
660-018-0050	4-18-2008	Amend	6-1-2008
660-018-0055	4-18-2008	Amend	6-1-2008
660-018-0060	4-18-2008	Amend	6-1-2008
660-018-0085	4-18-2008	Amend	6-1-2008
660-018-0140	4-18-2008	Amend	6-1-2008
660-018-0150	4-18-2008	Amend	6-1-2008
660-021-0010	2-13-2008	Amend	3-1-2008
660-021-0020	2-13-2008	Amend	3-1-2008
660-021-0030	2-13-2008	Amend	3-1-2008
660-021-0040	2-13-2008	Amend	3-1-2008
660-021-0050	2-13-2008	Amend	3-1-2008
660-021-0060	2-13-2008	Amend	3-1-2008
660-021-0070	2-13-2008	Amend	3-1-2008
660-021-0080	2-13-2008	Amend	3-1-2008
660-024-0030	4-18-2008	Amend	6-1-2008
660-025-0040	2-13-2008	Amend	3-1-2008
660-026-0000	4-18-2008	Repeal	6-1-2008
660-026-0010	4-18-2008	Repeal	6-1-2008
660-026-0020	4-18-2008	Repeal	6-1-2008
660-026-0030	4-18-2008	Repeal	6-1-2008
660-026-0040	4-18-2008	Repeal	6-1-2008
660-027-0005	2-13-2008	Adopt	3-1-2008
660-027-0010	2-13-2008	Adopt	3-1-2008
660-027-0020	2-13-2008	Adopt	3-1-2008
660-027-0030	2-13-2008	Adopt	3-1-2008
660-027-0040	2-13-2008	Adopt	3-1-2008
660-027-0050	2-13-2008	Adopt	3-1-2008
660-027-0060	2-13-2008	Adopt	3-1-2008
660-027-0070	2-13-2008	Adopt	3-1-2008
660-027-0080	2-13-2008	Adopt	3-1-2008
660-033-0020	4-18-2008	Amend	6-1-2008
660-033-0030	4-18-2008	Amend	6-1-2008
660-033-0120	4-18-2008	Amend	6-1-2008
660-033-0130	4-18-2008	Amend	6-1-2008
660-041-0000	12-10-2007	Amend(T)	1-1-2008
660-041-0000	2-21-2008	Amend(T)	4-1-2008
660-041-0000	5-23-2008	Amend	7-1-2008
660-041-0010	12-10-2007	Amend(T)	1-1-2008
660-041-0010	2-21-2008	Amend(T)	4-1-2008
660-041-0010	5-23-2008	Amend	7-1-2008
660-041-0020	2-21-2008	Amend(T)	4-1-2008
660-041-0020	5-23-2008	Amend	7-1-2008
660-041-0030	12-10-2007	Amend(T)	1-1-2008
660-041-0030	2-21-2008	Amend(T)	4-1-2008
660-041-0030	5-23-2008	Amend	7-1-2008
660-041-0040	12-10-2007	Amend(T)	1-1-2008
660-041-0040	2-21-2008	Amend(T)	4-1-2008
660-041-0040	5-23-2008	Amend	7-1-2008
660-041-0050	12-10-2007	Suspend	1-1-2008
660-041-0050	2-21-2008	Suspend	4-1-2008
660-041-0050	5-23-2008	Repeal	7-1-2008
660-041-0060	12-10-2007	Adopt(T)	1-1-2008
660-041-0060	2-21-2008	Adopt(T)	4-1-2008
660-041-0060	5-23-2008	Adopt	7-1-2008
660-041-0070	12-10-2007	Adopt(T)	1-1-2008
660-041-0070	2-21-2008	Adopt(T)	4-1-2008
660-041-0070	5-23-2008	Adopt	7-1-2008
660-041-0080	2-21-2008	Adopt(T)	4-1-2008
660-041-0080	5-23-2008	Adopt	7-1-2008
660-041-0090	2-21-2008	Adopt(T)	4-1-2008
660-041-0090	5-23-2008	Adopt	7-1-2008
660-041-0100	2-21-2008	Adopt(T)	4-1-2008
660-041-0100	5-23-2008	Adopt	7-1-2008
660-041-0110	5-23-2008	Adopt	7-1-2008
660-041-0120	5-23-2008	Adopt	7-1-2008
660-041-0130	5-23-2008	Adopt	7-1-2008
660-041-0140	5-23-2008	Adopt	7-1-2008
660-041-0150	5-23-2008	Adopt	7-1-2008
660-041-0160	5-23-2008	Adopt	7-1-2008
660-041-0500	12-10-2007	Adopt(T)	1-1-2008
660-041-0500	2-21-2008	Adopt(T)	4-1-2008
660-041-0500	5-23-2008	Adopt	7-1-2008
660-041-0510	12-10-2007	Adopt(T)	1-1-2008
660-041-0510	2-21-2008	Adopt(T)	4-1-2008
660-041-0510	5-23-2008	Adopt	7-1-2008
660-041-0520	12-10-2007	Adopt(T)	1-1-2008
660-041-0520	2-21-2008	Adopt(T)	4-1-2008
660-041-0520	5-23-2008	Adopt	7-1-2008
660-041-0530	12-10-2007	Adopt(T)	1-1-2008
660-041-0530	2-21-2008	Adopt(T)	4-1-2008
660-041-0530	5-23-2008	Adopt	7-1-2008
664-020-0010	4-1-2008	Adopt	3-1-2008
664-020-0020	4-1-2008	Adopt	3-1-2008
664-020-0030	4-1-2008	Adopt	3-1-2008
670-020-0010	3-22-2008	Adopt	3-1-2008
670-020-0020	3-22-2008	Adopt	3-1-2008
670-020-0030	3-22-2008	Adopt	3-1-2008
678-030-0000	1-11-2008	Adopt	2-1-2008
678-030-0010	1-11-2008	Adopt	2-1-2008
678-030-0020	1-11-2008	Adopt	2-1-2008
678-030-0030	1-11-2008	Adopt	2-1-2008
690-600-0000	6-6-2008	Adopt	7-1-2008
690-600-0010	6-6-2008	Adopt	7-1-2008

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690-600-0020	6-6-2008	Adopt	7-1-2008
690-600-0030	6-6-2008	Adopt	7-1-2008
690-600-0040	6-6-2008	Adopt	7-1-2008
690-600-0050	6-6-2008	Adopt	7-1-2008
690-600-0060	6-6-2008	Adopt	7-1-2008
690-600-0070	6-6-2008	Adopt	7-1-2008
695-003-0010	3-25-2008	Adopt	5-1-2008
695-003-0020	3-25-2008	Adopt	5-1-2008
695-003-0030	3-25-2008	Adopt	5-1-2008
695-003-0040	3-25-2008	Adopt	5-1-2008
695-007-0010	5-27-2008	Amend(T)	7-1-2008
695-007-0020	5-27-2008	Amend(T)	7-1-2008
695-007-0030	5-27-2008	Amend(T)	7-1-2008
695-007-0040	5-27-2008	Amend(T)	7-1-2008
731-001-0025	12-24-2007	Amend	2-1-2008
731-005-0450	1-24-2008	Amend(T)	3-1-2008
731-005-0450	5-19-2008	Amend	7-1-2008
731-005-0450(T)	5-19-2008	Repeal	7-1-2008
731-005-0550	12-24-2007	Amend(T)	2-1-2008
731-005-0550	5-19-2008	Amend	7-1-2008
731-005-0550(T)	5-19-2008	Repeal	7-1-2008
732-035-0010	4-24-2008	Adopt	6-1-2008
732-035-0020	4-24-2008	Adopt	6-1-2008
732-035-0030	4-24-2008	Adopt	6-1-2008
732-035-0040	4-24-2008	Adopt	6-1-2008
732-035-0050	4-24-2008	Adopt	6-1-2008
732-035-0060	4-24-2008	Adopt	6-1-2008
732-035-0070	4-24-2008	Adopt	6-1-2008
732-035-0080	4-24-2008	Adopt	6-1-2008
734-001-0025	4-24-2008	Amend	6-1-2008
734-010-0230	1-24-2008	Amend(T)	3-1-2008
734-010-0230	5-19-2008	Amend	7-1-2008
734-010-0230(T)	5-19-2008	Repeal	7-1-2008
734-010-0260	1-24-2008	Amend(T)	3-1-2008
734-010-0260	5-19-2008	Amend	7-1-2008
734-010-0260(T)	5-19-2008	Repeal	7-1-2008
734-059-0020	12-24-2007	Adopt	2-1-2008
734-059-0025	12-24-2007	Adopt	2-1-2008
734-059-0030	12-24-2007	Adopt	2-1-2008
734-059-0050	12-24-2007	Adopt	2-1-2008
734-074-0010	5-19-2008	Amend	7-1-2008
734-075-0010	4-24-2008	Amend(T)	6-1-2008
734-082-0015	5-19-2008	Amend	7-1-2008
734-082-0040	5-19-2008	Amend	7-1-2008
735-010-0045	12-24-2007	Amend	2-1-2008
735-010-0130	2-4-2008	Amend(T)	3-1-2008
735-016-0030	2-4-2008	Amend	3-1-2008
735-016-0040	2-4-2008	Amend	3-1-2008
735-020-0075	11-30-2007	Adopt	1-1-2008
735-024-0070	1-1-2008	Amend(T)	2-1-2008
735-024-0080	1-1-2008	Amend(T)	2-1-2008
735-028-0100	3-21-2008	Amend	5-1-2008
735-030-0300	1-1-2008	Adopt	2-1-2008
735-030-0310	1-1-2008	Adopt	2-1-2008
735-030-0320	1-1-2008	Adopt	2-1-2008
735-030-0330	1-1-2008	Adopt	2-1-2008
735-032-0020	1-1-2008	Amend(T)	2-1-2008
735-032-0050	1-1-2008	Amend	2-1-2008
735-040-0040	1-1-2008	Amend(T)	2-1-2008
735-040-0050	1-1-2008	Amend(T)	2-1-2008
735-040-0080	1-1-2008	Amend(T)	2-1-2008
735-040-0090	1-1-2008	Amend(T)	2-1-2008
735-040-0100	1-1-2008	Amend(T)	2-1-2008
735-046-0010	1-1-2008	Amend(T)	2-1-2008
735-046-0050	1-1-2008	Amend(T)	2-1-2008
735-050-0000	2-4-2008	Amend	3-1-2008
735-050-0060	2-4-2008	Amend	3-1-2008
735-050-0062	2-4-2008	Amend	3-1-2008
735-050-0064	2-4-2008	Amend	3-1-2008
735-060-0120	1-1-2008	Amend	2-1-2008
735-062-0000	1-1-2008	Amend	2-1-2008
735-062-0000	2-4-2008	Amend(T)	3-1-2008
735-062-0005	2-4-2008	Amend(T)	3-1-2008
735-062-0010	2-4-2008	Amend(T)	3-1-2008
735-062-0020	2-4-2008	Amend(T)	3-1-2008
735-062-0021	2-4-2008	Adopt(T)	3-1-2008
735-062-0030	2-4-2008	Amend	3-1-2008
735-062-0030	2-4-2008	Amend(T)	3-1-2008
735-062-0050	1-1-2008	Amend	2-1-2008
735-062-0073	1-1-2008	Amend	2-1-2008
735-062-0090	1-1-2008	Amend	2-1-2008
735-062-0090	2-4-2008	Amend(T)	3-1-2008
735-062-0090	2-22-2008	Amend(T)	4-1-2008
735-062-0090	4-24-2008	Amend	6-1-2008
735-062-0090(T)	4-24-2008	Repeal	6-1-2008
735-062-0110	2-4-2008	Amend(T)	3-1-2008
735-062-0200	1-1-2008	Amend	2-1-2008
735-062-0320	1-1-2008	Amend	2-1-2008
735-062-0330	1-1-2008	Amend	2-1-2008
735-062-0380	1-1-2008	Amend	2-1-2008
735-062-0390	1-1-2008	Adopt	2-1-2008
735-064-0005	2-4-2008	Amend	3-1-2008
735-064-0040	1-1-2008	Amend	2-1-2008
735-064-0070	1-1-2008	Amend	1-1-2008
735-064-0100	1-25-2008	Amend	3-1-2008
735-064-0220	1-1-2008	Amend	2-1-2008
735-064-0230	1-25-2008	Amend	3-1-2008
735-070-0010	2-4-2008	Amend(T)	3-1-2008
735-070-0080	1-1-2008	Amend	1-1-2008
735-070-0190	12-24-2007	Amend	2-1-2008
735-072-0035	1-1-2008	Amend	2-1-2008
735-074-0080	1-1-2008	Amend	2-1-2008
735-074-0140	1-1-2008	Amend	2-1-2008
735-074-0180	1-1-2008	Amend	2-1-2008
735-074-0260	1-1-2008	Am. & Ren.	2-1-2008
735-074-0270	1-1-2008	Am. & Ren.	2-1-2008
735-074-0280	1-1-2008	Am. & Ren.	2-1-2008
735-074-0290	1-1-2008	Am. & Ren.	2-1-2008
735-075-0005	5-19-2008	Amend	7-1-2008
735-076-0002	1-1-2008	Amend	2-1-2008
735-076-0005	2-22-2008	Amend(T)	4-1-2008
735-076-0005(T)	5-19-2008	Repeal	7-1-2008

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735-076-0018	1-1-2008	Amend	2-1-2008
735-076-0020	1-1-2008	Amend	2-1-2008
735-076-0035	1-1-2008	Amend	2-1-2008
735-080-0010	1-1-2008	Repeal	2-1-2008
735-080-0020	1-1-2008	Amend	2-1-2008
735-080-0030	1-1-2008	Repeal	2-1-2008
735-080-0040	1-1-2008	Amend	2-1-2008
735-080-0080	1-1-2008	Amend	2-1-2008
735-090-0000	12-24-2007	Amend	2-1-2008
735-090-0020	12-24-2007	Amend	2-1-2008
735-090-0051	12-24-2007	Amend	2-1-2008
735-090-0120	12-24-2007	Amend	2-1-2008
735-090-0130	12-24-2007	Amend	2-1-2008
735-152-0000	1-1-2008	Amend(T)	2-1-2008
735-152-0040	1-1-2008	Amend(T)	2-1-2008
735-152-0050	1-1-2008	Amend(T)	2-1-2008
735-152-0060	1-1-2008	Amend(T)	2-1-2008
735-158-0000	11-30-2007	Amend	1-1-2008
735-160-0115	12-24-2007	Amend	2-1-2008
736-002-0010	2-15-2008	Amend	3-1-2008
736-002-0020	2-15-2008	Amend	3-1-2008
736-002-0030	2-15-2008	Amend	3-1-2008
736-002-0032	2-15-2008	Adopt	3-1-2008
736-002-0038	2-15-2008	Adopt	3-1-2008
736-002-0040	2-15-2008	Repeal	3-1-2008
736-002-0042	2-15-2008	Adopt	3-1-2008
736-002-0050	2-15-2008	Adopt	3-1-2008
736-002-0052	2-15-2008	Adopt	3-1-2008
736-002-0058	2-15-2008	Adopt	3-1-2008
736-002-0060	2-15-2008	Repeal	3-1-2008
736-002-0070	2-15-2008	Amend	3-1-2008
736-002-0080	2-15-2008	Repeal	3-1-2008
736-002-0082	2-15-2008	Adopt	3-1-2008
736-002-0090	2-15-2008	Repeal	3-1-2008
736-002-0092	2-15-2008	Adopt	3-1-2008
736-002-0100	2-15-2008	Repeal	3-1-2008
736-002-0102	2-15-2008	Adopt	3-1-2008
736-002-0150	2-15-2008	Adopt	3-1-2008
736-002-0160	2-15-2008	Adopt	3-1-2008
736-006-0100	3-1-2008	Amend	3-1-2008
736-006-0110	3-1-2008	Amend(T)	3-1-2008
736-006-0110	5-15-2008	Amend	6-1-2008
736-006-0115	3-1-2008	Amend	3-1-2008
736-006-0125	3-1-2008	Amend	3-1-2008
736-006-0140	3-1-2008	Amend	3-1-2008
736-006-0150	3-1-2008	Amend	3-1-2008
736-040-0005	5-15-2008	Amend	6-1-2008
736-040-0015	5-15-2008	Amend	6-1-2008
736-040-0020	5-15-2008	Amend	6-1-2008
736-040-0035	5-15-2008	Amend	6-1-2008
736-040-0041	5-15-2008	Amend	6-1-2008
736-040-0042	5-15-2008	Amend	6-1-2008
736-040-0043	5-15-2008	Amend	6-1-2008
736-040-0044	5-15-2008	Amend	6-1-2008
736-040-0046	5-15-2008	Amend	6-1-2008
736-040-0056	5-15-2008	Amend	6-1-2008
736-040-0070	5-15-2008	Amend	6-1-2008
736-040-0071	5-15-2008	Amend	6-1-2008
736-040-0072	5-15-2008	Amend	6-1-2008
736-040-0073	5-15-2008	Amend	6-1-2008
736-040-0080	5-15-2008	Amend	6-1-2008
736-040-0085	5-15-2008	Amend	6-1-2008
736-040-0090	5-15-2008	Amend	6-1-2008
736-054-0005	2-15-2008	Amend	3-1-2008
736-054-0010	2-15-2008	Amend	3-1-2008
736-054-0015	2-15-2008	Amend	3-1-2008
736-054-0025	2-15-2008	Amend	3-1-2008
740-100-0010	4-1-2008	Amend	5-1-2008
740-100-0060	4-1-2008	Amend	5-1-2008
740-100-0070	4-1-2008	Amend	5-1-2008
740-100-0080	4-1-2008	Amend	5-1-2008
740-100-0090	4-1-2008	Amend	5-1-2008
740-100-0140	3-21-2008	Am. & Ren.	5-1-2008
740-110-0010	4-1-2008	Amend	5-1-2008
740-300-0140	3-21-2008	Am. & Ren.	5-1-2008
800-010-0015	2-1-2008	Amend	2-1-2008
800-010-0017	2-1-2008	Amend	2-1-2008
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800-010-0030	2-1-2008	Amend	2-1-2008
800-010-0041	2-1-2008	Amend	2-1-2008
800-015-0005	2-1-2008	Amend	2-1-2008
800-015-0010	2-1-2008	Amend	2-1-2008
800-015-0015	2-1-2008	Adopt	2-1-2008
800-015-0030	2-1-2008	Amend	2-1-2008
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800-020-0022	2-1-2008	Amend	2-1-2008
800-020-0025	2-1-2008	Amend	2-1-2008
800-020-0026	2-1-2008	Amend	2-1-2008
800-020-0030	2-1-2008	Amend	2-1-2008
800-020-0031	2-1-2008	Amend	2-1-2008
800-020-0035	2-1-2008	Amend	2-1-2008
800-025-0020	2-1-2008	Amend	2-1-2008
800-025-0023	2-1-2008	Amend	2-1-2008
800-025-0025	2-1-2008	Amend	2-1-2008
800-025-0030	2-1-2008	Amend	2-1-2008
800-025-0060	2-1-2008	Amend	2-1-2008
800-025-0070	2-1-2008	Amend	2-1-2008
800-030-0025	2-1-2008	Amend	2-1-2008
800-030-0050	2-1-2008	Amend	2-1-2008
801-001-0035	1-1-2008	Amend	2-1-2008
801-010-0340	1-1-2008	Amend	2-1-2008
801-030-0010	1-1-2008	Amend	2-1-2008
801-030-0015	1-1-2008	Amend	2-1-2008
801-030-0020	1-1-2008	Amend	2-1-2008
801-040-0030	1-1-2008	Amend	2-1-2008
804-022-0010	2-4-2008	Amend	3-1-2008
804-025-0020	2-4-2008	Amend	3-1-2008
804-030-0015	2-4-2008	Am. & Ren.	3-1-2008
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804-030-0035	2-4-2008	Am. & Ren.	3-1-2008

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806-010-0015	2-28-2008	Repeal	4-1-2008
806-010-0020	2-28-2008	Amend	4-1-2008
806-010-0033	2-28-2008	Amend	4-1-2008
806-010-0035	2-28-2008	Amend	4-1-2008
806-010-0090	7-1-2008	Amend	4-1-2008
806-010-0105	7-1-2008	Amend	4-1-2008
806-010-0145	7-1-2008	Amend	4-1-2008
808-001-0005	4-25-2008	Amend	6-1-2008
808-001-0020	1-1-2008	Amend	2-1-2008
808-001-0020	1-1-2008	Amend	2-1-2008
808-001-0020	4-11-2008	Amend	5-1-2008
808-001-0020	4-23-2008	Amend(T)	6-1-2008
808-002-0020	1-1-2008	Amend	2-1-2008
808-002-0210	1-1-2008	Amend	2-1-2008
808-002-0220	1-1-2008	Amend	2-1-2008
808-002-0220	1-1-2008	Amend	2-1-2008
808-002-0220	4-11-2008	Amend	5-1-2008
808-002-0280	1-1-2008	Amend	2-1-2008
808-002-0325	1-1-2008	Amend	2-1-2008
808-002-0328	1-1-2008	Amend	2-1-2008
808-002-0330	1-1-2008	Amend	2-1-2008
808-002-0500	1-1-2008	Amend	2-1-2008
808-002-0540	1-1-2008	Amend	2-1-2008
808-002-0590	1-1-2008	Adopt	2-1-2008
808-002-0623	6-2-2008	Adopt	7-1-2008
808-002-0625	1-1-2008	Adopt	2-1-2008
808-002-0665	1-1-2008	Amend	2-1-2008
808-002-0734	6-2-2008	Amend	7-1-2008
808-002-0870	1-1-2008	Amend	2-1-2008
808-002-0900	1-1-2008	Amend	2-1-2008
808-002-0920	1-1-2008	Amend	2-1-2008
808-003-0010	1-1-2008	Amend	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008
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808-003-0030	1-1-2008	Amend	2-1-2008
808-003-0030	6-2-2008	Amend	7-1-2008
808-003-0035	1-1-2008	Amend	2-1-2008
808-003-0035	1-1-2008	Amend	2-1-2008
808-003-0035	4-11-2008	Amend	5-1-2008
808-003-0040	1-1-2008	Amend	2-1-2008
808-003-0040	1-1-2008	Amend	2-1-2008
808-003-0040	4-11-2008	Amend	5-1-2008
808-003-0045	1-1-2008	Amend	2-1-2008
808-003-0045	1-1-2008	Amend	2-1-2008
808-003-0060	1-1-2008	Amend	2-1-2008
808-003-0090	1-1-2008	Amend	2-1-2008
808-003-0095	1-1-2008	Amend	2-1-2008
808-003-0100	1-1-2008	Amend	2-1-2008
808-003-0105	1-1-2008	Amend	2-1-2008
808-003-0110	1-1-2008	Amend	2-1-2008
808-003-0112	1-1-2008	Amend	2-1-2008
808-003-0125	1-1-2008	Amend	2-1-2008
808-003-0125	6-2-2008	Amend	7-1-2008
808-003-0130	1-1-2008	Amend	2-1-2008
808-003-0130	1-1-2008	Amend	2-1-2008
808-003-0130	4-11-2008	Amend	5-1-2008
808-003-0135	1-1-2008	Amend	2-1-2008
808-003-018	1-1-2008	Amend	2-1-2008
808-003-0200	1-1-2008	Amend	2-1-2008
808-003-0220	1-1-2008	Amend	2-1-2008
808-003-0225	1-1-2008	Amend	2-1-2008
808-003-0230	1-1-2008	Amend	2-1-2008
808-003-0230	1-1-2008	Amend	2-1-2008
808-003-0230	4-11-2008	Amend	5-1-2008
808-003-0235	1-1-2008	Amend	2-1-2008
808-003-0255	1-1-2008	Amend	2-1-2008
808-003-0440	1-1-2008	Amend	2-1-2008
808-004-0120	1-1-2008	Amend	2-1-2008
808-004-0120	4-11-2008	Amend	5-1-2008
808-004-0250	1-1-2008	Amend	2-1-2008
808-004-0320	1-1-2008	Amend	2-1-2008
808-004-0340	1-1-2008	Amend	2-1-2008
808-004-0340	1-1-2008	Amend	2-1-2008
808-004-0400	1-1-2008	Amend	2-1-2008
808-004-0450	1-1-2008	Amend	2-1-2008
808-004-0530	1-1-2008	Adopt	2-1-2008
808-004-0540	1-1-2008	Amend	2-1-2008
808-004-0600	1-1-2008	Amend	2-1-2008
808-005-0020	1-1-2008	Amend	2-1-2008
808-005-0020	1-1-2008	Amend	2-1-2008
808-005-0020	4-11-2008	Amend	5-1-2008
808-009-0360	1-14-2008	Suspend	2-1-2008
808-009-0360	3-7-2008	Repeal	4-1-2008
808-030-0010	1-1-2008	Adopt	2-1-2008
808-030-0010	6-2-2008	Amend	7-1-2008
808-030-0020	1-1-2008	Adopt	2-1-2008
808-030-0030	1-1-2008	Adopt	2-1-2008
808-030-0040	1-1-2008	Adopt	2-1-2008
808-030-0050	1-1-2008	Adopt	2-1-2008
808-030-0060	1-1-2008	Adopt	2-1-2008
808-030-0070	1-1-2008	Adopt	2-1-2008
808-040-0010	1-1-2008	Adopt	2-1-2008
808-040-0020	1-1-2008	Adopt	2-1-2008
808-040-0025	1-1-2008	Adopt	2-1-2008
808-040-0030	1-1-2008	Adopt	2-1-2008
808-040-0040	1-1-2008	Adopt	2-1-2008
808-040-0050	1-1-2008	Adopt	2-1-2008
808-040-0060	1-1-2008	Adopt	2-1-2008
808-040-0070	1-1-2008	Adopt	2-1-2008
808-040-0080	1-1-2008	Adopt	2-1-2008
809-030-0025	3-20-2008	Amend	5-1-2008
811-001-0005	1-31-2008	Amend	1-1-2008
811-010-0085	11-30-2007	Amend	1-1-2008
811-010-0086	11-30-2007	Amend	1-1-2008
811-010-0090	11-30-2007	Amend	1-1-2008
811-010-0093	11-30-2007	Amend	1-1-2008

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811-021-0005	11-30-2007	Amend	1-1-2008
811-030-0020	5-29-2008	Amend	7-1-2008
812-001-0100	7-1-2008	Amend	7-1-2008
812-001-0120	5-1-2008	Amend	6-1-2008
812-001-0140	7-1-2008	Amend	7-1-2008
812-001-0160	5-1-2008	Amend	6-1-2008
812-001-0200	1-1-2008	Amend	1-1-2008
812-001-0200	1-2-2008	Amend(T)	2-1-2008
812-001-0200	5-1-2008	Amend	6-1-2008
812-001-0200(T)	5-1-2008	Repeal	6-1-2008
812-001-0500	7-1-2008	Amend	7-1-2008
812-002-0011	7-1-2008	Amend	7-1-2008
812-002-0040	7-1-2008	Amend	7-1-2008
812-002-0140	1-1-2008	Amend	1-1-2008
812-002-0140	7-1-2008	Amend	7-1-2008
812-002-0143	1-1-2008	Amend	1-1-2008
812-002-0143	7-1-2008	Amend	7-1-2008
812-002-0160	7-1-2008	Amend	7-1-2008
812-002-0170	1-1-2008	Adopt	1-1-2008
812-002-0180	7-1-2008	Amend	7-1-2008
812-002-0190	7-1-2008	Amend	7-1-2008
812-002-0200	7-1-2008	Amend	7-1-2008
812-002-0260	7-1-2008	Amend	7-1-2008
812-002-0265	1-1-2008	Adopt	1-1-2008
812-002-0280	7-1-2008	Amend	7-1-2008
812-002-0320	7-1-2008	Amend	4-1-2008
812-002-0345	7-1-2008	Amend	7-1-2008
812-002-0380	7-1-2008	Amend	4-1-2008
812-002-0420	1-1-2008	Amend	1-1-2008
812-002-0420	7-1-2008	Amend	7-1-2008
812-002-0440	7-1-2008	Amend	7-1-2008
812-002-0443	7-1-2008	Amend	7-1-2008
812-002-0460	7-1-2008	Amend	7-1-2008
812-002-0530	7-1-2008	Amend	7-1-2008
812-002-0533	7-1-2008	Amend	7-1-2008
812-002-0537	7-1-2008	Amend	7-1-2008
812-002-0580	1-1-2008	Amend	1-1-2008
812-002-0630	1-1-2008	Adopt	1-1-2008
812-002-0630	7-1-2008	Amend	7-1-2008
812-002-0635	1-1-2008	Adopt	1-1-2008
812-002-0635	7-1-2008	Amend	7-1-2008
812-002-0640	1-1-2008	Amend	1-1-2008
812-002-0640	7-1-2008	Amend	7-1-2008
812-002-0670	7-1-2008	Amend	7-1-2008
812-002-0673	7-1-2008	Amend	7-1-2008
812-002-0675	7-1-2008	Amend	7-1-2008
812-002-0760	1-1-2008	Amend	1-1-2008
812-002-0760	7-1-2008	Amend	7-1-2008
812-002-0780	7-1-2008	Amend	7-1-2008
812-002-0840	1-1-2008	Repeal	1-1-2008
812-003-0110	7-1-2008	Amend	7-1-2008
812-003-0120	7-1-2008	Amend	7-1-2008
812-003-0130	7-1-2008	Amend	4-1-2008
812-003-0131	7-1-2008	Adopt	4-1-2008
812-003-0140	1-10-2008	Amend(T)	2-1-2008
812-003-0140	7-1-2008	Amend	4-1-2008
812-003-0150	1-1-2008	Amend	1-1-2008
812-003-0152	7-1-2008	Adopt	4-1-2008
812-003-0153	7-1-2008	Adopt	4-1-2008
812-003-0155	1-1-2008	Adopt	1-1-2008
812-003-0155	7-1-2008	Amend	4-1-2008
812-003-0160	1-1-2008	Amend	1-1-2008
812-003-0160	7-1-2008	Amend	7-1-2008
812-003-0170	1-1-2008	Amend	1-1-2008
812-003-0170	7-1-2008	Amend	4-1-2008
812-003-0171	7-1-2008	Adopt	4-1-2008
812-003-0175	1-1-2008	Amend	1-1-2008
812-003-0175	7-1-2008	Amend	4-1-2008
812-003-0180	1-1-2008	Amend	1-1-2008
812-003-0180	7-1-2008	Amend	7-1-2008
812-003-0190	1-1-2008	Amend	1-1-2008
812-003-0190	7-1-2008	Amend	7-1-2008
812-003-0200	1-1-2008	Amend	1-1-2008
812-003-0200	7-1-2008	Amend	4-1-2008
812-003-0210	7-1-2008	Amend	7-1-2008
812-003-0220	7-1-2008	Amend	4-1-2008
812-003-0221	7-1-2008	Adopt	4-1-2008
812-003-0230	7-1-2008	Amend	4-1-2008
812-003-0240	1-1-2008	Amend	1-1-2008
812-003-0240	7-1-2008	Amend	7-1-2008
812-003-0250	1-1-2008	Amend	1-1-2008
812-003-0250	7-1-2008	Amend	7-1-2008
812-003-0260	1-1-2008	Amend	1-1-2008
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812-003-0260	7-1-2008	Amend	4-1-2008
812-003-0260	7-1-2008	Amend	6-1-2008
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812-003-0280	1-1-2008	Amend	1-1-2008
812-003-0280	7-1-2008	Amend	4-1-2008
812-003-0290	1-1-2008	Amend	1-1-2008
812-003-0290	7-1-2008	Amend	4-1-2008
812-003-0300	1-1-2008	Amend	1-1-2008
812-003-0300	7-1-2008	Amend	4-1-2008
812-003-0310	1-1-2008	Amend	1-1-2008
812-003-0310	7-1-2008	Amend	7-1-2008
812-003-0320	7-1-2008	Amend	7-1-2008
812-003-0330	7-1-2008	Amend	7-1-2008
812-003-0340	7-1-2008	Amend	4-1-2008
812-003-0350	7-1-2008	Amend	7-1-2008
812-003-0360	7-1-2008	Amend	4-1-2008
812-003-0370	7-1-2008	Amend	7-1-2008
812-003-0380	1-1-2008	Amend	1-1-2008
812-003-0380	7-1-2008	Amend	7-1-2008
812-003-0390	7-1-2008	Amend	7-1-2008
812-003-0400	1-1-2008	Amend	1-1-2008
812-003-0400	7-1-2008	Amend	7-1-2008
812-003-0410	7-1-2008	Amend	7-1-2008
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812-004-0120	7-1-2008	Amend	7-1-2008
812-004-0210	7-1-2008	Amend	7-1-2008
812-004-0240	1-1-2008	Amend	1-1-2008
812-004-0240	7-1-2008	Amend	7-1-2008
812-004-0250	1-1-2008	Amend	1-1-2008
812-004-0250	7-1-2008	Amend	7-1-2008
812-004-0260	1-1-2008	Amend	1-1-2008
812-004-0300	7-1-2008	Amend	7-1-2008
812-004-0340	7-1-2008	Amend	7-1-2008
812-004-0400	7-1-2008	Amend	7-1-2008
812-004-0440	7-1-2008	Amend	7-1-2008
812-004-0470	7-1-2008	Amend	7-1-2008
812-004-0520	7-1-2008	Amend	7-1-2008
812-004-0535	7-1-2008	Amend	7-1-2008
812-004-0540	7-1-2008	Amend	7-1-2008
812-004-0550	7-1-2008	Amend	7-1-2008
812-004-0560	1-1-2008	Amend	1-1-2008
812-004-0560	7-1-2008	Amend	7-1-2008
812-004-0590	1-1-2008	Amend	1-1-2008
812-004-0590	7-1-2008	Amend	7-1-2008
812-004-0600	1-1-2008	Amend	1-1-2008
812-004-0600	7-1-2008	Amend	4-1-2008
812-005-0100	7-1-2008	Amend	7-1-2008
812-005-0140	7-1-2008	Amend	7-1-2008
812-005-0160	7-1-2008	Amend	7-1-2008
812-005-0170	7-1-2008	Amend	7-1-2008
812-005-0200	1-1-2008	Amend	1-1-2008
812-005-0200	7-1-2008	Amend	7-1-2008
812-005-0210	1-1-2008	Amend	1-1-2008
812-005-0210	7-1-2008	Amend	7-1-2008
812-005-0250	1-1-2008	Amend	1-1-2008
812-005-0250	7-1-2008	Amend	7-1-2008
812-005-0270	1-1-2008	Adopt	1-1-2008
812-005-0270	7-1-2008	Amend	4-1-2008
812-005-0800	1-2-2008	Amend(T)	2-1-2008
812-005-0800	7-1-2008	Amend	4-1-2008
812-006-0100	7-1-2008	Amend	7-1-2008
812-006-0150	7-1-2008	Amend	7-1-2008
812-006-0200	7-1-2008	Amend	7-1-2008
812-006-0250	7-1-2008	Amend	7-1-2008
812-006-0300	7-1-2008	Amend	7-1-2008
812-006-0350	7-1-2008	Amend	7-1-2008
812-006-0400	7-1-2008	Amend	7-1-2008
812-007-0040	7-1-2008	Amend	4-1-2008
812-008-0030	7-1-2008	Amend	4-1-2008
812-008-0040	1-1-2008	Amend	1-1-2008
812-008-0040	7-1-2008	Amend	4-1-2008
812-008-0060	1-1-2008	Amend	1-1-2008
812-008-0070	1-1-2008	Amend	1-1-2008
812-008-0110	1-1-2008	Amend	1-1-2008
812-009-0020	7-1-2008	Amend	7-1-2008
812-009-0050	7-1-2008	Amend	7-1-2008
812-009-0070	7-1-2008	Amend	7-1-2008
812-009-0090	7-1-2008	Amend	7-1-2008
812-009-0140	1-1-2008	Amend	1-1-2008
812-009-0140	7-1-2008	Amend	7-1-2008
812-009-0160	7-1-2008	Amend	7-1-2008
812-009-0200	7-1-2008	Amend	7-1-2008
812-009-0220	7-1-2008	Amend	7-1-2008
812-009-0320	7-1-2008	Amend	7-1-2008
812-009-0340	7-1-2008	Amend	7-1-2008
812-009-0400	5-1-2008	Amend	6-1-2008
812-009-0420	5-1-2008	Amend	6-1-2008
812-009-0430	7-1-2008	Amend	7-1-2008
812-009-0435	5-1-2008	Adopt	6-1-2008
812-010-0020	7-1-2008	Amend	7-1-2008
812-010-0060	7-1-2008	Amend	7-1-2008
812-010-0080	7-1-2008	Amend	7-1-2008
812-010-0090	7-1-2008	Amend	7-1-2008
812-010-0100	7-1-2008	Amend	7-1-2008
812-010-0120	7-1-2008	Amend	7-1-2008
812-010-0160	7-1-2008	Amend	7-1-2008
812-010-0400	7-1-2008	Amend	7-1-2008
812-010-0420	1-1-2008	Amend	1-1-2008
812-010-0420	7-1-2008	Amend	7-1-2008
812-010-0425	7-1-2008	Amend	7-1-2008
812-010-0470	1-1-2008	Amend	1-1-2008
812-010-0470	7-1-2008	Amend	7-1-2008
812-012-0110	1-1-2008	Adopt	1-1-2008
812-012-0110	7-1-2008	Amend	7-1-2008
812-012-0130	1-1-2008	Adopt	1-1-2008
812-012-0130	1-18-2008	Amend(T)	3-1-2008
812-012-0130	5-1-2008	Amend	6-1-2008
812-012-0130(T)	5-1-2008	Repeal	6-1-2008
813-110-0005	4-11-2008	Amend	5-1-2008
813-110-0005(T)	4-11-2008	Repeal	5-1-2008
813-110-0010	4-11-2008	Amend	5-1-2008
813-110-0010(T)	4-11-2008	Repeal	5-1-2008
813-110-0013	4-11-2008	Adopt	5-1-2008
813-110-0013(T)	4-11-2008	Repeal	5-1-2008
813-110-0015	4-11-2008	Amend	5-1-2008
813-110-0015(T)	4-11-2008	Repeal	5-1-2008
813-110-0020	4-11-2008	Amend	5-1-2008
813-110-0020(T)	4-11-2008	Repeal	5-1-2008
813-110-0021	4-11-2008	Amend	5-1-2008
813-110-0021(T)	4-11-2008	Repeal	5-1-2008
813-110-0022	4-11-2008	Amend	5-1-2008
813-110-0022(T)	4-11-2008	Repeal	5-1-2008
813-110-0025	4-11-2008	Amend	5-1-2008
813-110-0025(T)	4-11-2008	Repeal	5-1-2008
813-110-0030	4-11-2008	Amend	5-1-2008
813-110-0030(T)	4-11-2008	Repeal	5-1-2008
813-110-0035	4-11-2008	Amend	5-1-2008
813-110-0035(T)	4-11-2008	Repeal	5-1-2008
813-120-0001	1-28-2008	Amend	3-1-2008
813-120-0010	1-28-2008	Amend	3-1-2008
813-120-0020	1-28-2008	Amend	3-1-2008
813-120-0030	1-28-2008	Am. & Ren.	3-1-2008
813-120-0040	1-28-2008	Amend	3-1-2008

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813-120-0060	1-28-2008	Amend	3-1-2008
813-120-0070	1-28-2008	Amend	3-1-2008
813-120-0080	1-28-2008	Amend	3-1-2008
813-120-0090	1-28-2008	Amend	3-1-2008
813-120-0100	1-28-2008	Am. & Ren.	3-1-2008
813-120-0110	1-28-2008	Amend	3-1-2008
813-120-0120	1-28-2008	Amend	3-1-2008
813-120-0130	1-28-2008	Amend	3-1-2008
813-120-0140	1-28-2008	Amend	3-1-2008
813-140-0010	12-18-2007	Amend(T)	2-1-2008
813-140-0050	12-18-2007	Amend(T)	2-1-2008
813-140-0090	12-18-2007	Amend(T)	2-1-2008
813-140-0095	12-18-2007	Adopt(T)	2-1-2008
813-220-0001	3-31-2008	Amend	5-1-2008
813-220-0005	3-31-2008	Amend	5-1-2008
813-220-0010	3-31-2008	Amend	5-1-2008
813-220-0015	3-31-2008	Amend	5-1-2008
813-220-0020	3-31-2008	Amend	5-1-2008
813-220-0030	3-31-2008	Amend	5-1-2008
813-220-0050	3-31-2008	Amend	5-1-2008
813-220-0060	3-31-2008	Amend	5-1-2008
813-250-0000	4-11-2008	Amend	5-1-2008
813-250-0010	4-11-2008	Amend	5-1-2008
813-250-0020	4-11-2008	Amend	5-1-2008
813-250-0030	4-11-2008	Amend	5-1-2008
813-250-0040	4-11-2008	Amend	5-1-2008
813-300-0010	3-18-2008	Amend	5-1-2008
813-300-0010(T)	3-18-2008	Repeal	5-1-2008
813-300-0020	3-18-2008	Amend	5-1-2008
813-300-0020(T)	3-18-2008	Repeal	5-1-2008
813-300-0030	3-18-2008	Amend	5-1-2008
813-300-0030(T)	3-18-2008	Repeal	5-1-2008
813-300-0060	3-18-2008	Amend	5-1-2008
813-300-0060(T)	3-18-2008	Repeal	5-1-2008
813-300-0080	3-18-2008	Amend	5-1-2008
813-300-0080(T)	3-18-2008	Repeal	5-1-2008
813-300-0100	3-18-2008	Amend	5-1-2008
813-300-0100(T)	3-18-2008	Repeal	5-1-2008
813-300-0120	3-18-2008	Amend	5-1-2008
813-300-0120(T)	3-18-2008	Repeal	5-1-2008
817-010-0065	6-1-2008	Amend	7-1-2008
817-015-0050	6-1-2008	Amend	7-1-2008
817-015-0065	6-1-2008	Amend	7-1-2008
817-015-0070	6-1-2008	Adopt	7-1-2008
818-001-0087	11-30-2007	Amend	1-1-2008
818-012-0030	11-30-2007	Amend	1-1-2008
818-021-0060	11-30-2007	Amend	1-1-2008
818-021-0070	11-30-2007	Amend	1-1-2008
818-035-0030	11-30-2007	Amend	1-1-2008
818-035-0040	11-30-2007	Amend	1-1-2008
818-035-0065	11-30-2007	Amend	1-1-2008
818-042-0040	11-30-2007	Amend	1-1-2008
818-042-0060	11-30-2007	Amend	1-1-2008
818-042-0095	11-30-2007	Adopt	1-1-2008
820-010-0236	3-12-2008	Adopt	4-1-2008
820-010-0300	3-12-2008	Amend	4-1-2008
820-010-0305	3-12-2008	Amend	4-1-2008
820-010-0325	3-12-2008	Amend	4-1-2008
820-010-0415	3-12-2008	Amend	4-1-2008
820-010-0425	3-12-2008	Amend	4-1-2008
820-010-0427	3-12-2008	Amend	4-1-2008
820-010-0450	3-12-2008	Amend	4-1-2008
820-010-0605	3-12-2008	Amend	4-1-2008
833-020-0050	6-1-2008	Amend(T)	7-1-2008
833-025-0050	6-1-2008	Amend(T)	7-1-2008
833-025-0060	6-1-2008	Amend(T)	7-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
833-060-0001	6-1-2008	Am. & Ren.(T)	7-1-2008
834-010-0030	4-9-2008	Amend	5-1-2008
836-009-0007	12-11-2007	Amend(T)	1-1-2008
836-009-0007	6-2-2008	Amend	7-1-2008
836-042-0045	4-7-2008	Amend	5-1-2008
836-043-0068	4-7-2008	Amend	5-1-2008
836-052-0500	1-1-2008	Amend	1-1-2008
836-052-0508	1-1-2008	Adopt	1-1-2008
836-052-0516	1-1-2008	Amend	1-1-2008
836-052-0526	1-1-2008	Amend	1-1-2008
836-052-0531	1-1-2008	Adopt	1-1-2008
836-052-0546	1-1-2008	Amend	1-1-2008
836-052-0556	1-1-2008	Amend	1-1-2008
836-052-0566	1-1-2008	Amend	1-1-2008
836-052-0576	1-1-2008	Amend	1-1-2008
836-052-0616	1-1-2008	Amend	1-1-2008
836-052-0626	1-1-2008	Amend	1-1-2008
836-052-0636	1-1-2008	Amend	1-1-2008
836-052-0639	1-1-2008	Adopt	1-1-2008
836-052-0656	1-1-2008	Amend	1-1-2008
836-052-0666	1-1-2008	Amend	1-1-2008
836-052-0676	1-1-2008	Amend	1-1-2008
836-052-0696	1-1-2008	Amend	1-1-2008
836-052-0700	1-1-2008	Am. & Ren.	1-1-2008
836-052-0706	1-1-2008	Amend	1-1-2008
836-052-0726	1-1-2008	Amend	1-1-2008
836-052-0736	1-1-2008	Amend	1-1-2008
836-052-0738	1-1-2008	Adopt	1-1-2008
836-052-0740	1-1-2008	Adopt	1-1-2008
836-052-0746	1-1-2008	Amend	1-1-2008
836-052-0756	1-1-2008	Amend	1-1-2008
836-052-0766	1-1-2008	Amend	1-1-2008
836-052-0776	1-1-2008	Amend	1-1-2008
836-052-0786	1-1-2008	Amend	1-1-2008
836-052-1000	1-1-2008	Adopt	2-1-2008
836-053-0007	4-18-2008	Adopt	6-1-2008
836-053-0016	2-11-2008	Repeal	3-1-2008
836-053-0021	2-11-2008	Amend	3-1-2008
836-053-0026	2-11-2008	Repeal	3-1-2008

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836-053-0030	2-11-2008	Amend	3-1-2008
836-053-0040	2-11-2008	Amend	3-1-2008
836-053-0050	2-11-2008	Amend	3-1-2008
836-053-0060	2-11-2008	Amend	3-1-2008
836-053-0065	2-11-2008	Amend	3-1-2008
836-053-0065(T)	2-11-2008	Repeal	3-1-2008
836-053-0081	4-18-2008	Adopt	6-1-2008
836-053-0910	12-21-2007	Amend(T)	2-1-2008
836-053-1400	4-18-2008	Amend	6-1-2008
836-054-0050	1-16-2008	Repeal	3-1-2008
836-054-0055	1-16-2008	Repeal	3-1-2008
836-054-0060	1-16-2008	Repeal	3-1-2008
836-054-0065	1-16-2008	Repeal	3-1-2008
836-071-0130	12-11-2007	Amend(T)	1-1-2008
836-071-0130	6-2-2008	Amend	7-1-2008
836-071-0135	12-11-2007	Amend(T)	1-1-2008
836-071-0135	6-2-2008	Amend	7-1-2008
836-071-0145	12-11-2007	Amend(T)	1-1-2008
836-071-0145	6-2-2008	Amend	7-1-2008
836-200-0105	4-7-2008	Adopt	5-1-2008
836-200-0110	4-7-2008	Adopt	5-1-2008
836-200-0120	4-7-2008	Adopt	5-1-2008
836-200-0130	4-7-2008	Adopt	5-1-2008
836-200-0140	4-7-2008	Adopt	5-1-2008
836-200-0200	4-14-2008	Adopt	5-1-2008
836-200-0210	4-14-2008	Adopt	5-1-2008
836-200-0215	4-14-2008	Adopt	5-1-2008
836-200-0220	4-14-2008	Adopt	5-1-2008
837-012-0520	1-25-2008	Amend(T)	3-1-2008
837-012-0520	5-1-2008	Amend	5-1-2008
837-020-0035	11-30-2007	Amend(T)	1-1-2008
837-020-0035	5-1-2008	Amend	5-1-2008
837-020-0115	11-30-2007	Amend(T)	1-1-2008
837-020-0115	5-1-2008	Amend	5-1-2008
837-035-0000	11-16-2007	Adopt	1-1-2008
837-035-0020	11-16-2007	Adopt	1-1-2008
837-035-0040	11-16-2007	Adopt	1-1-2008
837-035-0060	11-16-2007	Adopt	1-1-2008
837-035-0080	11-16-2007	Adopt	1-1-2008
837-035-0100	11-16-2007	Adopt	1-1-2008
837-035-0120	11-16-2007	Adopt	1-1-2008
837-035-0140	11-16-2007	Adopt	1-1-2008
837-035-0160	11-16-2007	Adopt	1-1-2008
837-035-0180	11-16-2007	Adopt	1-1-2008
837-035-0200	11-16-2007	Adopt	1-1-2008
837-035-0220	11-16-2007	Adopt	1-1-2008
837-035-0240	11-16-2007	Adopt	1-1-2008
837-035-0260	11-16-2007	Adopt	1-1-2008
837-035-0280	11-16-2007	Adopt	1-1-2008
837-035-0300	11-16-2007	Adopt	1-1-2008
837-035-0320	11-16-2007	Adopt	1-1-2008
837-035-0340	11-16-2007	Adopt	1-1-2008
839-001-0150	1-1-2008	Amend	2-1-2008
839-001-0153	1-1-2008	Amend	2-1-2008
839-001-0157	1-1-2008	Repeal	2-1-2008
839-001-0160	1-1-2008	Amend	2-1-2008
839-001-0495	1-1-2008	Adopt	2-1-2008
839-001-0496	1-1-2008	Adopt	2-1-2008
839-001-0740	1-1-2008	Amend	2-1-2008
839-001-0760	1-1-2008	Amend	2-1-2008
839-002-0015	1-1-2008	Adopt	2-1-2008
839-002-0020	1-1-2008	Adopt	2-1-2008
839-002-0025	1-1-2008	Adopt	2-1-2008
839-002-0030	1-1-2008	Adopt	2-1-2008
839-002-0035	1-1-2008	Adopt	2-1-2008
839-002-0040	1-1-2008	Adopt	2-1-2008
839-002-0045	1-1-2008	Adopt	2-1-2008
839-002-0050	1-1-2008	Adopt	2-1-2008
839-002-0055	1-1-2008	Adopt	2-1-2008
839-002-0060	1-1-2008	Adopt	2-1-2008
839-002-0065	1-1-2008	Adopt	2-1-2008
839-002-0070	1-1-2008	Adopt	2-1-2008
839-002-0080	1-1-2008	Adopt	2-1-2008
839-003-0005	1-1-2008	Amend	2-1-2008
839-003-0005	3-25-2008	Amend(T)	5-1-2008
839-003-0010	3-25-2008	Amend(T)	5-1-2008
839-003-0020	1-1-2008	Amend	2-1-2008
839-003-0020	3-25-2008	Amend(T)	5-1-2008
839-003-0025	3-25-2008	Amend(T)	5-1-2008
839-003-0040	3-25-2008	Amend(T)	5-1-2008
839-003-0045	3-25-2008	Amend(T)	5-1-2008
839-003-0050	3-25-2008	Amend(T)	5-1-2008
839-003-0055	1-1-2008	Amend	2-1-2008
839-003-0055	3-25-2008	Amend(T)	5-1-2008
839-003-0060	1-1-2008	Amend	2-1-2008
839-003-0060	3-25-2008	Amend(T)	5-1-2008
839-003-0065	3-25-2008	Amend(T)	5-1-2008
839-003-0070	3-25-2008	Amend(T)	5-1-2008
839-003-0080	1-1-2008	Amend	2-1-2008
839-003-0080	3-25-2008	Amend(T)	5-1-2008
839-003-0085	3-25-2008	Amend(T)	5-1-2008
839-003-0090	1-1-2008	Amend	2-1-2008
839-003-0090	3-25-2008	Amend(T)	5-1-2008
839-003-0095	3-25-2008	Amend(T)	5-1-2008
839-003-0100	3-25-2008	Amend(T)	5-1-2008
839-003-0200	1-1-2008	Adopt	2-1-2008
839-003-0200	3-25-2008	Amend(T)	5-1-2008
839-003-0205	1-1-2008	Adopt	2-1-2008
839-003-0205	3-25-2008	Amend(T)	5-1-2008
839-003-0210	1-1-2008	Adopt	2-1-2008
839-003-0210	3-25-2008	Amend(T)	5-1-2008
839-003-0215	1-1-2008	Adopt	2-1-2008
839-003-0215	3-25-2008	Amend(T)	5-1-2008
839-003-0220	1-1-2008	Adopt	2-1-2008
839-003-0220	3-25-2008	Amend(T)	5-1-2008
839-003-0225	1-1-2008	Adopt	2-1-2008
839-003-0225	3-25-2008	Amend(T)	5-1-2008
839-003-0230	1-1-2008	Adopt	2-1-2008
839-003-0230	3-25-2008	Amend(T)	5-1-2008
839-003-0235	1-1-2008	Adopt	2-1-2008
839-003-0235	3-25-2008	Amend(T)	5-1-2008
839-003-0240	1-1-2008	Adopt	2-1-2008

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839-003-0245	1-1-2008	Adopt	2-1-2008
839-003-0245	3-25-2008	Amend(T)	5-1-2008
839-005-0000	1-1-2008	Amend	2-1-2008
839-005-0000	3-25-2008	Amend(T)	5-1-2008
839-005-0003	1-1-2008	Amend	2-1-2008
839-005-0003	3-25-2008	Amend(T)	5-1-2008
839-005-0010	1-1-2008	Amend	2-1-2008
839-005-0010	3-25-2008	Amend(T)	5-1-2008
839-005-0016	1-1-2008	Adopt	2-1-2008
839-005-0016	3-25-2008	Amend(T)	5-1-2008
839-005-0021	1-1-2008	Amend	2-1-2008
839-005-0026	1-1-2008	Amend	2-1-2008
839-005-0026	3-25-2008	Amend(T)	5-1-2008
839-005-0030	1-1-2008	Amend	2-1-2008
839-005-0195	1-1-2008	Adopt	2-1-2008
839-005-0195	3-25-2008	Amend(T)	5-1-2008
839-005-0200	1-1-2008	Adopt	2-1-2008
839-005-0200	3-25-2008	Amend(T)	5-1-2008
839-005-0205	1-1-2008	Adopt	2-1-2008
839-005-0205	3-25-2008	Amend(T)	5-1-2008
839-005-0210	1-1-2008	Adopt	2-1-2008
839-005-0215	1-1-2008	Adopt	2-1-2008
839-005-0220	1-1-2008	Adopt	2-1-2008
839-005-0220	3-25-2008	Amend(T)	5-1-2008
839-006-0105	1-1-2008	Amend	2-1-2008
839-006-0130	1-1-2008	Amend	2-1-2008
839-006-0131	1-1-2008	Amend	2-1-2008
839-006-0135	1-1-2008	Amend	2-1-2008
839-006-0136	1-1-2008	Amend	2-1-2008
839-006-0150	1-1-2008	Amend	2-1-2008
839-006-0200	6-6-2008	Amend	7-1-2008
839-006-0244	6-6-2008	Amend	7-1-2008
839-006-0255	6-6-2008	Amend	7-1-2008
839-006-0270	6-6-2008	Amend	7-1-2008
839-006-0275	6-6-2008	Amend	7-1-2008
839-006-0290	6-6-2008	Amend	7-1-2008
839-006-0300	6-6-2008	Amend	7-1-2008
839-006-0330	6-6-2008	Amend	7-1-2008
839-006-0335	6-6-2008	Amend	7-1-2008
839-006-0400	1-1-2008	Repeal	2-1-2008
839-006-0405	1-1-2008	Repeal	2-1-2008
839-006-0410	1-1-2008	Repeal	2-1-2008
839-006-0415	1-1-2008	Repeal	2-1-2008
839-006-0425	1-1-2008	Repeal	2-1-2008
839-007-0075	1-1-2008	Adopt	2-1-2008
839-009-0210	1-1-2008	Amend	2-1-2008
839-009-0240	1-1-2008	Amend	2-1-2008
839-009-0250	1-1-2008	Amend	2-1-2008
839-009-0260	1-1-2008	Amend	2-1-2008
839-009-0280	1-1-2008	Amend	2-1-2008
839-009-0320	1-1-2008	Amend	2-1-2008
839-009-0325	1-1-2008	Adopt	2-1-2008
839-009-0330	1-1-2008	Adopt	2-1-2008
839-009-0335	1-1-2008	Adopt	2-1-2008
839-009-0340	1-1-2008	Adopt	2-1-2008
839-009-0345	1-1-2008	Adopt	2-1-2008
839-009-0350	1-1-2008	Adopt	2-1-2008
839-009-0355	1-1-2008	Adopt	2-1-2008
839-009-0360	1-1-2008	Adopt	2-1-2008
839-009-0362	1-1-2008	Adopt	2-1-2008
839-009-0363	1-1-2008	Adopt	2-1-2008
839-009-0365	1-1-2008	Adopt	2-1-2008
839-010-0000	1-1-2008	Amend	2-1-2008
839-010-0010	1-1-2008	Amend	2-1-2008
839-010-0020	1-1-2008	Amend	2-1-2008
839-010-0040	1-1-2008	Amend	2-1-2008
839-010-0100	1-1-2008	Amend	2-1-2008
839-010-0110	1-1-2008	Repeal	2-1-2008
839-015-0140	1-1-2008	Amend	2-1-2008
839-015-0141	5-5-2008	Amend(T)	6-1-2008
839-015-0508	1-1-2008	Amend	2-1-2008
839-015-0509	1-1-2008	Adopt	2-1-2008
839-015-0605	3-10-2008	Amend	4-1-2008
839-020-0012	1-1-2008	Amend	2-1-2008
839-020-0015	1-1-2008	Amend	2-1-2008
839-020-0050	1-1-2008	Amend	2-1-2008
839-020-0051	1-1-2008	Adopt	2-1-2008
839-020-0080	1-1-2008	Amend	2-1-2008
839-020-0260	1-1-2008	Amend	2-1-2008
839-020-1010	1-1-2008	Amend	2-1-2008
839-025-0004	1-1-2008	Amend	2-1-2008
839-025-0005	1-1-2008	Adopt	2-1-2008
839-025-0007	1-1-2008	Amend	2-1-2008
839-025-0008	1-1-2008	Amend	2-1-2008
839-025-0008	3-10-2008	Amend	4-1-2008
839-025-0010	1-1-2008	Amend	2-1-2008
839-025-0013	1-1-2008	Amend	2-1-2008
839-025-0015	3-10-2008	Amend	4-1-2008
839-025-0020	1-1-2008	Amend	2-1-2008
839-025-0025	1-1-2008	Amend	2-1-2008
839-025-0035	1-1-2008	Amend	2-1-2008
839-025-0037	1-1-2008	Amend	2-1-2008
839-025-0080	1-1-2008	Amend	2-1-2008
839-025-0085	1-1-2008	Amend	2-1-2008
839-025-0090	1-1-2008	Amend	2-1-2008
839-025-0095	1-1-2008	Amend	2-1-2008
839-025-0100	1-1-2008	Amend	2-1-2008
839-025-0150	1-1-2008	Amend	2-1-2008
839-025-0200	1-1-2008	Amend	2-1-2008
839-025-0210	1-1-2008	Amend	2-1-2008
839-025-0220	1-1-2008	Amend	2-1-2008
839-025-0230	1-1-2008	Amend	2-1-2008
839-025-0310	1-1-2008	Amend	2-1-2008
839-025-0315	1-1-2008	Adopt	2-1-2008
839-025-0340	1-1-2008	Amend	2-1-2008
839-025-0500	1-1-2008	Amend	2-1-2008
839-025-0520	1-1-2008	Amend	2-1-2008
839-025-0530	1-1-2008	Amend	2-1-2008
839-025-0540	1-1-2008	Amend	2-1-2008
839-025-0700	11-23-2007	Amend	1-1-2008
839-025-0700	1-1-2008	Amend	2-1-2008

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839-025-0700	2-21-2008	Amend	4-1-2008
839-025-0700	3-13-2008	Amend	4-1-2008
839-025-0700	4-1-2008	Amend	5-1-2008
839-025-0700	4-14-2008	Amend	5-1-2008
839-025-0700	4-24-2008	Amend	6-1-2008
839-025-0700	4-30-2008	Amend	6-1-2008
839-025-0700	6-11-2008	Amend	7-1-2008
839-025-0750	4-23-2008	Amend	6-1-2008
839-025-0750	6-5-2008	Amend	7-1-2008
845-001-0007	4-1-2008	Amend	5-1-2008
845-003-0670	2-1-2008	Amend	3-1-2008
845-004-0001	7-1-2008	Amend	7-1-2008
845-005-0311	7-1-2008	Amend	7-1-2008
845-005-0416	1-1-2008	Adopt(T)	1-1-2008
845-005-0416	4-18-2008	Amend(T)	6-1-2008
845-005-0416	6-29-2008	Adopt	7-1-2008
845-005-0416(T)	4-18-2008	Suspend	6-1-2008
845-005-0417	1-1-2008	Adopt(T)	1-1-2008
845-005-0417	4-18-2008	Amend(T)	6-1-2008
845-005-0417	6-29-2008	Adopt	7-1-2008
845-005-0417(T)	4-18-2008	Suspend	6-1-2008
845-005-0420	1-1-2008	Amend(T)	1-1-2008
845-005-0420	6-29-2008	Amend	7-1-2008
845-005-0422	1-1-2008	Suspend	1-1-2008
845-005-0422	6-29-2008	Repeal	7-1-2008
845-005-0423	1-1-2008	Suspend	1-1-2008
845-005-0423	6-29-2008	Repeal	7-1-2008
845-005-0424	1-1-2008	Amend(T)	1-1-2008
845-005-0424	6-29-2008	Amend	7-1-2008
845-005-0425	1-1-2008	Adopt(T)	1-1-2008
845-005-0425	6-29-2008	Adopt	7-1-2008
845-005-0426	1-1-2008	Adopt(T)	1-1-2008
845-005-0426	6-29-2008	Adopt	7-1-2008
845-005-0430	2-18-2008	Adopt(T)	3-1-2008
845-005-0430(T)	3-17-2008	Suspend	5-1-2008
845-005-0440	1-1-2008	Amend	2-1-2008
845-006-0335	7-1-2008	Amend	7-1-2008
845-006-0340	1-1-2008	Amend	2-1-2008
845-006-0340	6-1-2008	Amend	6-1-2008
845-006-0391	1-1-2008	Adopt(T)	1-1-2008
845-006-0391	4-18-2008	Amend(T)	6-1-2008
845-006-0391	6-29-2008	Adopt	7-1-2008
845-006-0391(T)	4-18-2008	Suspend	6-1-2008
845-006-0392	1-1-2008	Adopt(T)	1-1-2008
845-006-0392	4-18-2008	Amend(T)	6-1-2008
845-006-0392	6-29-2008	Adopt	7-1-2008
845-006-0392(T)	4-18-2008	Suspend	6-1-2008
845-006-0395	1-1-2008	Suspend	1-1-2008
845-006-0395	6-29-2008	Repeal	7-1-2008
845-006-0396	1-1-2008	Amend(T)	1-1-2008
845-006-0396	4-18-2008	Amend(T)	6-1-2008
845-006-0396	6-29-2008	Amend	7-1-2008
845-006-0396(T)	4-18-2008	Suspend	6-1-2008
845-006-0398	1-1-2008	Suspend	1-1-2008
845-006-0398	6-29-2008	Repeal	7-1-2008
845-006-0400	1-1-2008	Adopt(T)	1-1-2008
845-006-0400	6-29-2008	Adopt	7-1-2008
845-006-0401	1-1-2008	Adopt(T)	1-1-2008
845-006-0401	6-29-2008	Adopt	7-1-2008
845-006-0451	2-18-2008	Adopt(T)	3-1-2008
845-006-0451(T)	3-17-2008	Suspend	5-1-2008
845-007-0015	1-1-2008	Amend	2-1-2008
845-008-0045	7-1-2008	Amend	7-1-2008
845-015-0118	7-1-2008	Amend	7-1-2008
845-015-0141	1-1-2008	Adopt(T)	1-1-2008
845-015-0141	6-29-2008	Adopt	7-1-2008
845-015-0148	7-1-2008	Amend	7-1-2008
845-015-0165	1-1-2008	Amend	2-1-2008
845-015-0190	7-1-2008	Amend	7-1-2008
845-020-0035	3-16-2008	Amend	3-1-2008
847-001-0030	5-16-2008	Adopt(T)	7-1-2008
847-005-0005	1-22-2008	Amend	3-1-2008
847-008-0015	4-24-2008	Amend	6-1-2008
847-008-0018	4-24-2008	Adopt	6-1-2008
847-008-0022	4-24-2008	Amend	6-1-2008
847-008-0023	4-24-2008	Amend	6-1-2008
847-008-0037	1-22-2008	Amend	3-1-2008
847-008-0037	4-24-2008	Amend	6-1-2008
847-008-0055	1-22-2008	Amend	3-1-2008
847-010-0060	1-22-2008	Amend	3-1-2008
847-010-0064	1-22-2008	Amend	3-1-2008
847-010-0070	1-22-2008	Amend	3-1-2008
847-010-0073	1-22-2008	Amend	3-1-2008
847-015-0030	4-24-2008	Amend	6-1-2008
847-017-0010	4-24-2008	Amend	6-1-2008
847-020-0155	1-22-2008	Amend	3-1-2008
847-020-0183	1-22-2008	Amend	3-1-2008
847-023-0005	1-22-2008	Amend	3-1-2008
847-035-0030	4-24-2008	Amend	6-1-2008
847-050-0020	1-22-2008	Amend	3-1-2008
847-070-0016	4-24-2008	Amend(T)	6-1-2008
847-080-0010	4-24-2008	Amend	6-1-2008
847-080-0018	4-24-2008	Amend	6-1-2008
848-035-0020	2-19-2008	Amend(T)	4-1-2008
850-010-0005	6-11-2008	Amend	7-1-2008
850-030-0020	6-10-2008	Amend	6-1-2008
850-030-0035	6-10-2008	Amend	6-1-2008
850-030-0090	6-10-2008	Amend	6-1-2008
850-030-0195	6-10-2008	Amend	6-1-2008
850-050-0120	6-11-2008	Amend	7-1-2008
850-060-0225	2-19-2008	Amend	4-1-2008
850-060-0225	3-21-2008	Amend	5-1-2008
850-060-0225	6-11-2008	Amend	7-1-2008
850-060-0226	2-19-2008	Amend	4-1-2008
850-060-0226	3-21-2008	Amend	5-1-2008
850-060-0226	6-11-2008	Amend	7-1-2008
851-045-0015	11-21-2007	Amend	1-1-2008
851-056-0012	11-21-2007	Amend	1-1-2008
851-056-0012	2-25-2008	Amend	4-1-2008
851-061-0020	2-25-2008	Amend	4-1-2008

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851-061-0080	2-25-2008	Amend	4-1-2008
851-061-0090	2-25-2008	Amend	4-1-2008
851-061-0120	2-25-2008	Amend	4-1-2008
852-001-0001	12-7-2007	Amend	1-1-2008
852-001-0002	12-7-2007	Amend	1-1-2008
852-050-0006	12-7-2007	Amend	1-1-2008
852-080-0030	1-1-2008	Amend	1-1-2008
855-006-0005	2-20-2008	Amend	4-1-2008
855-006-0015	2-5-2008	Adopt	3-1-2008
855-010-0045	2-20-2008	Adopt	4-1-2008
855-019-0005	2-20-2008	Am. & Ren.	4-1-2008
855-019-0007	2-20-2008	Repeal	4-1-2008
855-019-0010	2-20-2008	Am. & Ren.	4-1-2008
855-019-0015	2-20-2008	Am. & Ren.	4-1-2008
855-019-0020	2-20-2008	Repeal	4-1-2008
855-019-0025	2-20-2008	Am. & Ren.	4-1-2008
855-019-0030	2-20-2008	Am. & Ren.	4-1-2008
855-019-0035	2-20-2008	Repeal	4-1-2008
855-019-0040	2-20-2008	Am. & Ren.	4-1-2008
855-019-0050	2-20-2008	Am. & Ren.	4-1-2008
855-019-0055	2-20-2008	Am. & Ren.	4-1-2008
855-019-0100	2-20-2008	Adopt	4-1-2008
855-019-0110	2-20-2008	Adopt	4-1-2008
855-019-0150	2-20-2008	Adopt	4-1-2008
855-019-0220	2-20-2008	Adopt	4-1-2008
855-019-0240	2-20-2008	Adopt	4-1-2008
855-019-0250	2-20-2008	Adopt	4-1-2008
855-019-0300	2-20-2008	Adopt	4-1-2008
855-035-0005	2-20-2008	Amend	4-1-2008
855-035-0020	2-20-2008	Amend	4-1-2008
855-041-0020	2-20-2008	Amend	4-1-2008
855-041-0050	2-20-2008	Am. & Ren.	4-1-2008
855-041-0060	2-20-2008	Amend	4-1-2008
855-041-0061	2-5-2008	Adopt	3-1-2008
855-041-0063	2-20-2008	Am. & Ren.	4-1-2008
855-041-0085	2-20-2008	Am. & Ren.	4-1-2008
855-041-0086	2-20-2008	Amend	4-1-2008
855-041-0100	2-20-2008	Am. & Ren.	4-1-2008
855-041-0210	2-20-2008	Am. & Ren.	4-1-2008
855-041-0300	2-20-2008	Amend	4-1-2008
855-041-0400	2-20-2008	Am. & Ren.	4-1-2008
855-041-0500	2-20-2008	Am. & Ren.	4-1-2008
855-041-0510	2-20-2008	Am. & Ren.	4-1-2008
855-041-0520	2-20-2008	Am. & Ren.	4-1-2008
855-042-0020	2-20-2008	Am. & Ren.	4-1-2008
855-045-0200	2-20-2008	Adopt	4-1-2008
855-045-0210	2-20-2008	Adopt	4-1-2008
855-045-0220	2-20-2008	Adopt	4-1-2008
855-045-0230	2-20-2008	Adopt	4-1-2008
855-045-0250	2-20-2008	Adopt	4-1-2008
855-045-0260	2-20-2008	Adopt	4-1-2008
855-045-0270	2-20-2008	Adopt	4-1-2008
855-055-0005	2-20-2008	Repeal	4-1-2008
855-055-0010	2-20-2008	Repeal	4-1-2008
855-055-0015	2-20-2008	Repeal	4-1-2008
855-055-0020	2-20-2008	Repeal	4-1-2008
856-001-0000	1-24-2008	Amend	3-1-2008
856-001-0005	1-24-2008	Amend	3-1-2008
856-010-0003	1-24-2008	Amend	3-1-2008
856-010-0010	1-24-2008	Amend	3-1-2008
856-010-0012	1-24-2008	Amend	3-1-2008
856-010-0014	1-24-2008	Amend	3-1-2008
856-010-0015	1-24-2008	Amend	3-1-2008
856-010-0016	1-24-2008	Amend	3-1-2008
856-010-0018	1-24-2008	Amend	3-1-2008
856-010-0020	1-24-2008	Amend	3-1-2008
856-030-0002	4-28-2008	Amend	6-1-2008
858-010-0001	3-26-2008	Amend	5-1-2008
858-010-0005	3-26-2008	Amend	5-1-2008
858-010-0007	3-26-2008	Amend	5-1-2008
858-010-0010	3-26-2008	Amend	5-1-2008
858-010-0015	3-26-2008	Amend	5-1-2008
858-010-0020	3-26-2008	Amend	5-1-2008
858-010-0025	3-26-2008	Amend	5-1-2008
858-010-0030	3-26-2008	Amend	5-1-2008
858-010-0036	3-26-2008	Amend	5-1-2008
858-010-0041	3-26-2008	Amend	5-1-2008
858-010-0050	3-26-2008	Amend	5-1-2008
858-010-0055	3-26-2008	Amend	5-1-2008
858-010-0075	3-26-2008	Amend	5-1-2008
858-020-0015	3-26-2008	Amend	5-1-2008
858-020-0045	3-26-2008	Amend	5-1-2008
858-020-0075	3-26-2008	Amend	5-1-2008
858-030-0005	3-26-2008	Amend	5-1-2008
858-040-0015	3-26-2008	Amend	5-1-2008
858-040-0025	3-26-2008	Amend	5-1-2008
858-040-0035	3-26-2008	Amend	5-1-2008
858-040-0036	3-26-2008	Amend	5-1-2008
858-040-0055	3-26-2008	Amend	5-1-2008
858-040-0065	3-26-2008	Amend	5-1-2008
858-040-0075	3-26-2008	Amend	5-1-2008
858-040-0085	3-26-2008	Amend	5-1-2008
858-040-0095	3-26-2008	Amend	5-1-2008
858-050-0100	3-26-2008	Amend	5-1-2008
858-050-0105	3-26-2008	Amend	5-1-2008
858-050-0110	3-26-2008	Amend	5-1-2008
858-050-0120	3-26-2008	Amend	5-1-2008
858-050-0125	3-26-2008	Amend	5-1-2008
858-050-0140	3-26-2008	Amend	5-1-2008
858-050-0145	3-26-2008	Amend	5-1-2008
858-050-0150	3-26-2008	Amend	5-1-2008
860-012-0100	3-11-2008	Amend	4-1-2008
860-036-0030	5-30-2008	Amend	7-1-2008
860-038-0005	12-31-2007	Amend	2-1-2008
860-038-0480	12-31-2007	Amend	2-1-2008
863-005-0000	7-1-2008	Adopt	7-1-2008
863-005-0005	7-1-2008	Adopt	7-1-2008
863-005-0010	7-1-2008	Adopt	7-1-2008
863-005-0020	7-1-2008	Adopt	7-1-2008
863-005-0030	7-1-2008	Adopt	7-1-2008
863-005-0040	7-1-2008	Adopt	7-1-2008

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863-005-0070	7-1-2008	Adopt	7-1-2008
863-005-0080	7-1-2008	Adopt	7-1-2008
863-005-0090	7-1-2008	Adopt	7-1-2008
863-015-0125	1-18-2008	Amend(T)	3-1-2008
863-015-0125	7-1-2008	Amend	7-1-2008
863-015-0125(T)	7-1-2008	Repeal	7-1-2008
875-005-0005	2-11-2008	Amend	3-1-2008
875-005-0005	5-21-2008	Amend	7-1-2008
875-010-0026	2-11-2008	Amend	3-1-2008
875-010-0050	2-11-2008	Amend	3-1-2008
875-010-0090	2-11-2008	Amend	3-1-2008
875-010-0090	2-11-2008	Amend(T)	3-1-2008
875-011-0010	3-19-2008	Amend	5-1-2008
875-015-0030	2-11-2008	Amend	3-1-2008
875-020-0005	4-21-2008	Amend(T)	5-1-2008
875-030-0030	2-11-2008	Amend	3-1-2008
875-030-0040	2-11-2008	Amend	3-1-2008
875-030-0050	2-11-2008	Amend	3-1-2008
875-030-0050	5-12-2008	Amend	6-1-2008
918-001-0010	3-18-2008	Amend	5-1-2008
918-020-0094	1-1-2008	Adopt	2-1-2008
918-020-0094(T)	1-1-2008	Repeal	2-1-2008
918-030-0045	1-3-2008	Adopt(T)	2-1-2008
918-030-0200	1-1-2008	Amend	2-1-2008
918-030-0220	1-1-2008	Amend	2-1-2008
918-030-0230	1-1-2008	Amend	2-1-2008
918-098-1012	1-1-2008	Amend	2-1-2008
918-098-1015	1-1-2008	Amend	2-1-2008
918-225-0240	1-1-2008	Amend	2-1-2008
918-225-0345	1-1-2008	Adopt	2-1-2008
918-225-0600	1-1-2008	Amend	2-1-2008
918-225-0610	1-1-2008	Amend	2-1-2008
918-225-0640	1-1-2008	Amend	2-1-2008
918-282-0130	1-1-2008	Amend	2-1-2008
918-282-0210	1-1-2008	Repeal	2-1-2008
918-282-0220	1-1-2008	Amend	2-1-2008
918-282-0240	1-1-2008	Amend	2-1-2008
918-282-0270	4-1-2008	Amend	4-1-2008
918-282-0300	1-1-2008	Repeal	2-1-2008
918-282-0310	1-1-2008	Repeal	2-1-2008
918-282-0355	1-1-2008	Amend	2-1-2008
918-305-0005	4-1-2008	Amend	4-1-2008
918-305-0030	4-1-2008	Amend	4-1-2008
918-305-0100	4-1-2008	Amend	4-1-2008
918-305-0105	4-1-2008	Amend	4-1-2008
918-305-0110	4-1-2008	Amend	4-1-2008
918-305-0120	4-1-2008	Amend	4-1-2008
918-305-0130	4-1-2008	Amend	4-1-2008
918-305-0150	4-1-2008	Amend	4-1-2008
918-305-0160	4-1-2008	Amend	4-1-2008
918-305-0165	4-1-2008	Amend	4-1-2008
918-305-0180	4-1-2008	Amend	4-1-2008
918-305-0190	4-1-2008	Amend	4-1-2008
918-305-0205	4-1-2008	Amend	4-1-2008
918-305-0210	4-1-2008	Amend	4-1-2008
918-305-0250	4-1-2008	Amend	4-1-2008
918-305-0270	4-1-2008	Amend	4-1-2008
918-305-0280	4-1-2008	Amend	4-1-2008
918-305-0290	4-1-2008	Amend	4-1-2008
918-305-0300	4-1-2008	Amend	4-1-2008
918-305-0310	4-1-2008	Amend	4-1-2008
918-305-0320	4-1-2008	Amend	4-1-2008
918-400-0280	1-1-2008	Amend	2-1-2008
918-400-0333	1-1-2008	Amend	2-1-2008
918-400-0340	1-1-2008	Amend	2-1-2008
918-400-0380	1-1-2008	Amend	2-1-2008
918-400-0800	1-1-2008	Amend	2-1-2008
918-480-0005	4-1-2008	Amend	4-1-2008
918-480-0010	4-1-2008	Amend	4-1-2008
918-480-0140	4-1-2008	Adopt	4-1-2008
918-750-0110	4-1-2008	Amend	4-1-2008
918-780-0030	1-1-2008	Amend	2-1-2008
952-001-0070	5-30-2008	Amend	7-1-2008
972-040-0000	1-23-2008	Adopt	3-1-2008
972-040-0010	1-23-2008	Adopt	3-1-2008
972-040-0020	1-23-2008	Adopt	3-1-2008